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9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11 Sandi Rush,

12 Plaintiff,

13 vs.

14 Encinitas Town Center Associates I,  
15 LLC; Zelman Development Co.;  
16 Party City Corp. dba Party City  
17 #526; Office Depot, Inc. dba Office  
18 Depot #965; Best Buy Stores, LP dba  
19 Best Buy #1187; Ross Dress for  
20 Less, Inc. dba Ross Dress for Less  
21 #359; Barnes & Noble Booksellers,  
22 Inc. dba Barnes & Noble Super Store  
23 #2785; Stater Bros. Markets dba  
24 Stater Bros. Market #6158; K R  
25 Schulz Management, Inc. dba  
26 McDonald's #14229; McDonald's  
27 Corporation; Petsmart, Inc. dba  
28 Petsmart #144; Target Corporation  
dba Target #1029,

Defendants.

No. '11CV2987 DMS POR

**Plaintiff's Complaint**

I. SUMMARY

1. This is a civil rights action by plaintiff Sandi Rush (“Rush”) for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complexes known as:

Party City #526  
1006 North El Camino Real  
Encinitas, CA 92024  
(hereafter “the Party City Facility”)

Office Depot #965  
1018 North El Camino Real  
Encinitas, CA 92024  
(hereafter “the Office Depot Facility”)

Best Buy #1187  
1046 North El Camino Real  
Encinitas, CA 92024  
(hereafter “the Best Buy Facility”)

Ross Dress for Less #359  
1038 North El Camino Real  
Encinitas, CA 92024  
(hereafter “the Ross Dress for Less Facility”)

Barnes & Noble Super Store #2785  
1040 North El Camino Real  
Encinitas, CA 92024  
(hereafter “the Barnes & Noble Facility”)

Stater Bros. Market #6158  
1048 North El Camino Real  
Encinitas, CA 92024  
(hereafter “the Stater Bros. Facility”)

1 McDonald's #14229  
2 1064 North El Camino Real  
3 Encinitas, CA 92024  
4 (hereafter "the McDonald's Facility")

5 Petsmart #144  
6 1035 North El Camino Real  
7 Encinitas, CA 92024  
8 (hereafter "the Petsmart Facility")

9 Target #1029  
10 1010 North El Camino Real  
11 Encinitas, CA 92024  
12 (hereafter "the Target Facility")

13 Encinitas Ranch Town Center  
14 1006-1064 North El Camino Real  
15 Encinitas, CA 92024  
16 (hereafter "the Encinitas Ranch Town Center Facility")

17 2. Rush seeks damages, injunctive and declaratory relief, attorney fees  
18 and costs against pursuant to the Americans with Disabilities Act of 1990 (42  
19 U.S.C. §§ 12101 et seq.) and related California statutes:

- 20 • Party City Corp. dba Party City #526; Encinitas Town Center Associates I,  
21 LLC; and, Zelman Development Co. (collectively, "Party City");
- 22 • Office Depot, Inc. dba Office Depot #965; Encinitas Town Center  
23 Associates I, LLC; and, Zelman Development Co. (collectively, "Office  
24 Depot");
- 25 • Best Buy Stores, LP dba Best Buy #1187; Encinitas Town Center  
26 Associates I, LLC; and, Zelman Development Co. (collectively, "Best  
27 Buy");
- 28 • Ross Dress for Less, Inc. dba Ross Dress for Less #359; Encinitas Town  
Center Associates I, LLC; and, Zelman Development Co. (collectively,  
"Ross Dress for Less");

- 1 • Barnes & Noble Booksellers, Inc. dba Barnes & Noble Super Store #2785;  
2 Encinitas Town Center Associates I, LLC; and, Zelman Development Co.  
3 (collectively, “Barnes & Noble”);
- 4 • Stater Bros. Markets dba Stater Bros. Market #6158; Encinitas Town  
5 Center Associates I, LLC; and, Zelman Development Co. (collectively,  
6 “Stater Bros.”);
- 7 • K R Schulz Management, Inc. dba McDonald’s #14229; McDonald’s  
8 Corporation; and, Zelman Development Co. (collectively, “McDonald’s”);
- 9 • Petsmart, Inc. dba Petsmart #144; Encinitas Town Center Associates I,  
10 LLC; and, Zelman Development Co. (collectively, “Petsmart”);
- 11 • Target Corporation dba Target #1029; and Zelman Development Co.  
12 (collectively “Target”); and,
- 13 • Encinitas Town Center Associates I, LLC; and, Zelman Development Co.  
14 (collectively, “Encinitas Ranch Town Center”).

## 15 II. JURISDICTION

16 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and  
17 1343 for ADA claims.

18 4. Supplemental jurisdiction for claims brought under parallel  
19 California law—arising from the same nucleus of operative facts—is predicated  
20 on 28 U.S.C. § 1367.

21 5. Rush’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

## 22 III. VENUE

23 6. All actions complained of herein take place within the jurisdiction of  
24 the United States District Court, Southern District of California, and venue is  
25 invoked pursuant to 28 U.S.C. § 1391(b), (c).

IV. PARTIES

7. Party City owns, operates, and/or leases the Party City Facility, and consists of a person (or persons), firm, and/or corporation.

8. Office Depot owns, operates, and/or leases the Office Depot Facility, and consists of a person (or persons), firm, and/or corporation.

9. Best Buy owns, operates, and/or leases the Best Buy Facility, and consists of a person (or persons), firm, and/or corporation.

10. Ross Dress for Less owns, operates, and/or leases the Ross Dress for Less Facility, and consists of a person (or persons), firm, and/or corporation.

11. Barnes & Noble owns, operates, and/or leases the Barnes & Noble Facility, and consists of a person (or persons), firm, and/or corporation.

12. Stater Bros. owns, operates, and/or leases the Stater Bros. Facility, and consists of a person (or persons), firm, and/or corporation.

13. McDonald's owns, operates, and/or leases the McDonald's Facility, and consists of a person (or persons), firm, and/or corporation.

14. Petsmart owns, operates, and/or leases the Petsmart Facility, and consists of a person (or persons), firm, and/or corporation.

15. Target owns, operates, and/or leases the Target Facility, and consists of a person (or persons), firm, and/or corporation.

16. Encinitas Ranch Town Center owns, operates, and/or leases the Encinitas Ranch Town Center Facility, and consists of a person (or persons), firm, and/or corporation.

17. Rush is a paraplegic who is unable to walk or stand, and requires the use of a wheelchair when traveling about in public. Consequently, Rush is "physically disabled," as defined by all applicable California and United States laws, and a member of the public whose rights are protected by these laws.

V. FACTS

18. The Party City Facility is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.

19. The Office Depot Facility is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.

20. The Best Buy Facility is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.

21. The Ross Dress for Less Facility is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.

22. The Barnes & Noble Facility is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.

23. The Stater Bros. Facility is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.

24. The McDonald's Facility is an establishment serving food and drink, open to the public, which is intended for nonresidential use and whose operation affects commerce.

25. The Petsmart Facility is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.

1           26. The Target Facility is a sales or retail establishment, open to the  
2 public, which is intended for nonresidential use and whose operation affects  
3 commerce.

4           27. The Encinitas Ranch Town Center Facility is a sales or retail  
5 establishment, open to the public, which is intended for nonresidential use and  
6 whose operation affects commerce.

7           28. Rush visited these facilities and encountered barriers (both physical  
8 and intangible) that interfered with—if not outright denied—his ability to use and  
9 enjoy the goods, services, privileges, and accommodations offered at both  
10 facilities.

11           29. To the extent known by Rush, the barriers at the Party City Facility  
12 included, but are not limited to, the following:

- 13           • The slopes and cross slopes of at least on of the disabled parking  
14 spaces exceed 2.0%. Without a level parking space, it is difficult for  
15 Rush to unload/transfer from her vehicle as either 1) her wheelchair  
16 rolls, or 2) her platform lift cannot sit level;
- 17           • The access aisle adjacent to the disabled parking spaces is painted  
18 entirely blue, has no striping, and lacks the words “NO PARKING”  
19 painted within. Without the required striping and no parking  
20 language, drivers may park their vehicles in the aisle, thus rendering  
21 it – and the adjacent parking spaces – unusable by Rush;
- 22           • The signage at the van accessible parking space is incorrect, thus  
23 making it difficult for Rush to determine which spaces to park in  
24 when traveling by van. Additionally, without the correct signage  
25 posted, Rush cannot have vehicles towed that are illegally parked in  
26 disabled parking spaces;

- Many of the aisle through the store are too narrow due to merchandise, thus making them difficult – if not impossible – for Rush to traverse;
- The signage posted on the restroom door is incorrect, thus making it difficult for Rush to determine if the facility is intended to be accessible to her;
- There is no signage posted at the strike side of the restroom door that would indicate to Rush whether or not the facility is intended to be accessible to her;
- The water closet obstructs the clear floor space required to access the disposable seat cover dispenser, thus making the dispenser impossible for Rush to reach and use;
- The disposable seat cover dispenser is mounted too high, thus making it impossible for Rush to reach and use;
- Due to its location above and behind the water closet, the disposable seat cover dispenser is outside of the required reach range limits and, thus, impossible for Ruhs to reach and use;
- The toilet tissue dispenser is mounted too high, thus making it impossible for Rush to reach and use;
- The toilet tissue dispenser is mounted too far from the front of the water closet, thus making it impossible for Rush to reach and use;
- The toilet tissue dispenser is mounted too far from the back wall, thus making it impossible for Rush to reach and use;
- The pipes beneath the lavatory are incompletely wrapped, thus causing Rush to risk burning her legs when using; and,



- The operable part of the paper towel dispenser is mounted too high, thus making it difficult – if not impossible – for Rush to reach and use.

These barriers prevented Rush from enjoying full and equal access.

30. To the extent known by Rush, the barriers at the Office Depot Facility included, but are not limited to, the following:

- The slopes and cross slopes of at least one of the disabled parking spaces exceed 2.0%. Without a level parking space, it is difficult for Rush to unload/transfer from her vehicle as either 1) her wheelchair rolls, or 2) her platform lift cannot sit level;
- The access aisle adjacent to the disabled parking spaces is painted entirely blue, has no striping, and lacks the words “NO PARKING” painted within. Without the required striping and no parking language, drivers may park their vehicles in the aisle, thus rendering it – and the adjacent parking spaces – unusable by Rush;
- The signage at the van accessible parking space is incorrect, thus making it difficult for Rush to determine which spaces to park in when traveling by van. Additionally, without the correct signage posted, Rush cannot have vehicles towed that are illegally parked in disabled parking spaces;
- The water closet obstructs the clear floor space required to access the disposable seat cover dispenser, thus making the dispenser impossible for Rush to reach and use;
- The disposable seat cover dispenser is mounted too high, thus making it impossible for Rush to reach and use;

- Due to its location above and behind the water closet, the disposable seat cover dispenser is outside of the required reach range limits and, thus, impossible for Ruhs to reach and use;
- The pipes beneath the lavatory are not completely wrapped, thus causing Rush to risk burning her legs when using;
- The paper towel dispenser is mounted too high, thus making it difficult – if not impossible – for Rush to reach and use;.

These barriers prevented Rush from enjoying full and equal access.

31. To the extent known by Rush, the barriers at the Best Buy Facility included, but are not limited to, the following:

- The disposable seat cover dispenser is an obstruction to the side grab bar. Without full use of this bar, it becomes difficult for Rush to transfer from her wheelchair to the water closet;
- The front roll of toilet tissue is too far from the front of the water closet, thus making it difficult – if not impossible – for Rush to reach and use;
- The front roll of toilet tissue is too far from the back wall, thus making it difficult – if not impossible – for Rush to reach and use;
- The pipes beneath the lavatories are not completely wrapped, thus causing Rush to risk burning her legs when using; and,
- The operable parts of the soap dispensers are more than 40 inches from the floor, thus making them difficult for Rush to reach and use.

These barriers prevented Rush from enjoying full and equal access.

32. To the extent known by Rush, the barriers at the Ross Dress for Less Facility included, but are not limited to, the following:

- The dressing room bench is not 24 inches wide by 48 inches long, or, in the alternative, a minimum of 42 inches long with 30 inches of

1 clear space at the end of the bench, thus making it impossible for  
2 Rush to complete a diagonal transfer;

- 3 • The interior lock of the water closet stall door requires twisting,  
4 pinching and/or grasping to operate, thus making it difficult for Rush  
5 to use;
- 6 • The disposable seat cover dispenser is mounted too high, thus  
7 making it difficult for Rush to reach and use;
- 8 • The front roll of toilet tissue is too far from the back wall, thus  
9 making it difficult for Rush to reach and use;
- 10 • The front roll of toilet tissue is too far from the front of the water  
11 closet, thus making it difficult for Rush to reach and use;
- 12 • The flush valve is not located on the wide side of the water closet,  
13 thus making it difficult – if not impossible – for Rush to reach and  
14 use;
- 15 • The pipes beneath the lavatories are not completely wrapped, thus  
16 causing Rush to risk burning her legs when using;
- 17 • The paper towel dispenser is mounted too high, thus making it  
18 difficult – if not impossible – for Rush to reach and use;
- 19 • There is insufficient strike side clearance when exiting the restroom,  
20 thus making it difficult for Rush to pull open the door;
- 21 • All of the check-out counters are too high, thus making it difficult  
22 for Rush to complete her transactions; and,
- 23 • The pay point machines are all too high, thus making them difficult  
24 for Rush to reach and use;.

25 These barriers prevented Rush from enjoying full and equal access.  
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1           33. To the extent known by Rush, the barriers at the Barnes & Noble  
2 Facility included, but are not limited to, the following:

- 3           • There is no handle mounted below the water closet stall door lock,  
4           thus making it difficult for Rush to completely close the door;
- 5           • The disposable seat cover dispensers are both mounted too high,  
6           thus making them difficult – if not impossible – for Rush to reach  
7           and use;
- 8           • The water closet obstructs the clear floor space required to access  
9           the disposable seat cover dispensers, thus making the dispensers  
10          difficult – if not impossible – for Rush to reach and use;
- 11          • Due to their location above and behind the water closet, the  
12          disposable seat cover dispensers are mounted outside of the required  
13          reach range limits and are, thus, difficult – if not impossible – for  
14          Rush to reach and use;
- 15          • The toilet tissue dispenser is too far from the back wall, thus making  
16          it difficult for Rush to reach and use;
- 17          • The toilet tissue dispenser is too far from the front of the water  
18          closet, thus making it difficult for Rush to reach and use;
- 19          • The pipes beneath the left-hand lavatory are not completely wrapped  
20          (those on the right-hand lavatory are not wrapped at all), thus  
21          causing Rush to risk burning her legs when using;
- 22          • There is insufficient strike side clearance when exiting the restroom,  
23          thus making it difficult for Rush to pull open the door; and,
- 24          • The check-out counter is too high, thus making it difficult for Rush  
25          to complete her transactions.

26           These barriers prevented Rush from enjoying full and equal access.  
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1           34. To the extent known by Rush, the barriers at the Stater Bros. Facility  
2 included, but are not limited to, the following:

- 3           • The water closet stall door lock requires twisting, pinching and/or
- 4           grasping to operate, thus making it difficult for Rush to use;
- 5           • The clothes hook on the interior of the water closet stall is mounted
- 6           too high, thus making it difficult for Rush to reach and use;
- 7           • The toilet tissue dispenser is mounted too high, thus making it
- 8           difficult for Rush to reach and use; and,
- 9           • The pipes beneath the lavatory are not completely wrapped, thus
- 10          causing Rush to risk burning her legs when using.

11          These barriers prevented Rush from enjoying full and equal access.

12          35. To the extent known by Rush, the barriers at the McDonald's  
13 Facility included, but are not limited to, the following:

- 14          • The signage at all of the disabled parking spaces is incorrect, thus
- 15          making it difficult for Rush – as well as other drivers – to determine
- 16          which spaces are intended for the sole use of the disabled.
- 17          Additionally, without the correct signage posted, Rush cannot have
- 18          vehicles towed that are illegally parked in disabled parking spaces;
- 19          • Because there is no cut-out ramp at the access aisle, it forces the user
- 20          of the left-most disabled parking space to travel behind vehicles
- 21          other than her own to reach the entrance. Because Rush is in a
- 22          wheelchair and sits very low to the ground, it is dangerous for her to
- 23          travel behind vehicles as they may reverse without seeing her;
- 24          • When left open (as appears to be the common practice), the door in
- 25          front of the right-most disabled parking space completely obstructs
- 26          the signage identifying the space as accessible, thus making it
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1           difficult for Rush – as well as other drivers – to determine that the  
2           space is intended for the sole use of the disabled;

- 3           • There is no International Symbol of Accessibility mounted at the  
4           front entrance, thus making it difficult for Rush to determine if 1)  
5           the restaurant is intended to be accessible to her, and 2) if this  
6           particular entrance is intended to be accessible to her or if there is  
7           another that is;
- 8           • There is no handle mounted below the water closet stall door lock,  
9           thus making it difficult for Rush to completely shut the door; and,
- 10          • The toilet tissue dispenser obstructs the use of the side grab bar.  
11           Without full use of this bar, it becomes difficult for Rush to transfer  
12           from her wheelchair to the water closet.

13           These barriers prevented Rush from enjoying full and equal access.

14           36. To the extent known by Rush, the barriers at the Petsmart Facility  
15           included, but are not limited to, the following:

- 16          • The slopes and cross slopes of at least one of the disabled parking  
17           spaces exceed 2.0%. Without a level parking space, it is difficult for  
18           Rush to unload/transfer from her vehicle as either 1) her wheelchair  
19           rolls, or 2) her platform lift cannot sit level;
- 20          • The access aisle adjacent to the disabled parking spaces is painted  
21           entirely blue, has no striping, and lacks the words “NO PARKING”  
22           painted within. Without the required striping and no parking  
23           language, drivers may park their vehicles in the aisle, thus rendering  
24           it – and the adjacent parking spaces – unusable by Rush;
- 25          • The toilet tissue dispenser is too far from the front of the water  
26           closet, thus making it difficult for Rush to reach and use;

- 1           • The toilet tissue dispenser is too far from the back wall, thus making
- 2           it difficult for Rush to reach and use; and,
- 3           • The toilet tissue dispenser obstructs the use of the side grab bar.
- 4           Without full use of this bar, it becomes difficult for Rush to transfer
- 5           from her wheelchair to the water closet; and,
- 6           • The pipes beneath the lavatory are not completely wrapped, thus
- 7           causing Rush to risk burning her legs when using.

8           These barriers prevented Rush from enjoying full and equal access.

9           37. To the extent known by Rush, the barriers at the Target Facility  
10 included, but are not limited to, the following:

- 11           • The slopes and cross slopes of multiple access aisles exceed 2.0%,
- 12           thus making it difficult for Rush to to unload/transfer from her
- 13           vehicle as either 1) her wheelchair rolls, or 2) her platform lift
- 14           cannot sit level;
- 15           • The signage at the van accessible parking spaces is incorrect, thus
- 16           making it difficult for Rush to determine which spaces to park in
- 17           when traveling by van. Additionally, without the correct signage
- 18           posted, Rush cannot have vehicles towed that are illegally parked in
- 19           disabled parking spaces;
- 20           • The water closet obstructs the clear floor space required to access
- 21           the disposable seat cover dispenser, thus making the dispenser
- 22           difficult for Rush to reach and use;
- 23           • The soap dispenser is mounted too high and is outside of the
- 24           required reach range limits, thus making it difficult for Rush to reach
- 25           and use; and,
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- There is insufficient clear knee space beneath the lavatories, thus making it difficult for Rush to pull under and reach the controls.

These barriers prevented Rush from enjoying full and equal access.

38. To the extent known by Rush, the barriers at the Encinitas Ranch Town Center Facility included, but are not limited to, the following:

- The slopes and cross slopes of many of the disabled parking spaces exceed 2.0%. Without a level parking space, it is difficult for Rush to unload/transfer from her vehicle as either 1) her wheelchair rolls, or 2) her platform lift cannot sit level;
- The slopes and cross slopes many of the access aisles adjacent to the disabled parking spaces exceed 2.0%. Without a level access aisle, it is difficult for Rush to unload/transfer from her vehicle as either 1) her wheelchair rolls, or 2) her platform lift cannot sit level;
- Almost all of the access aisles adjacent to the disabled parking spaces are painted entirely blue, has no striping, and lacks the words “NO PARKING” painted within. Without the required striping and no parking language, drivers may park their vehicles in the aisle, thus rendering it – and the adjacent parking spaces – unusable by Rush; and,
- The signage at the van accessible parking spaces is incorrect, thus making it difficult for Rush to determine which spaces to park in when traveling by van. Additionally, without the correct signage posted, Rush cannot have vehicles towed that are illegally parked in disabled parking spaces.

These barriers prevented Rush from enjoying full and equal access.

39. Rush was also deterred from visiting the Party City Facility because she knew that the Party City Facility’s goods, services, facilities, privileges,



1 advantages, and accommodations were unavailable to physically disabled patrons  
2 (such as herself). She continues to be deterred from visiting the Party City  
3 Facility because of the future threats of injury created by these barriers.

4 40. Rush was also deterred from visiting the Office Depot Facility  
5 because she knew that the Office Depot Facility's goods, services, facilities,  
6 privileges, advantages, and accommodations were unavailable to physically  
7 disabled patrons (such as herself). She continues to be deterred from visiting the  
8 Office Depot Facility because of the future threats of injury created by these  
9 barriers.

10 41. Rush was also deterred from visiting the Best Buy Facility because  
11 she knew that the Best Buy Facility's goods, services, facilities, privileges,  
12 advantages, and accommodations were unavailable to physically disabled patrons  
13 (such as herself). She continues to be deterred from visiting the Best Buy Facility  
14 because of the future threats of injury created by these barriers.

15 42. Rush was also deterred from visiting the Ross Dress for Less  
16 Facility because she knew that the Ross Dress for Less Facility's goods, services,  
17 facilities, privileges, advantages, and accommodations were unavailable to  
18 physically disabled patrons (such as herself). She continues to be deterred from  
19 visiting the Ross Dress for Less Facility because of the future threats of injury  
20 created by these barriers.

21 43. Rush was also deterred from visiting the Barnes & Noble Facility  
22 because she knew that the Barnes & Noble Facility's goods, services, facilities,  
23 privileges, advantages, and accommodations were unavailable to physically  
24 disabled patrons (such as herself). She continues to be deterred from visiting the  
25 Barnes & Noble Facility because of the future threats of injury created by these  
26 barriers.

1           44. Rush was also deterred from visiting the Stater Bros. Facility  
2 because she knew that the Stater Bros. Facility's goods, services, facilities,  
3 privileges, advantages, and accommodations were unavailable to physically  
4 disabled patrons (such as herself). She continues to be deterred from visiting the  
5 Stater Bros. Facility because of the future threats of injury created by these  
6 barriers.

7           45. Rush was also deterred from visiting the McDonald's Facility  
8 because she knew that the McDonald's Facility's goods, services, facilities,  
9 privileges, advantages, and accommodations were unavailable to physically  
10 disabled patrons (such as herself). She continues to be deterred from visiting the  
11 McDonald's Facility because of the future threats of injury created by these  
12 barriers.

13           46. Rush was also deterred from visiting the Petsmart Facility because  
14 she knew that the Petsmart Facility's goods, services, facilities, privileges,  
15 advantages, and accommodations were unavailable to physically disabled patrons  
16 (such as herself). She continues to be deterred from visiting the Petsmart Facility  
17 because of the future threats of injury created by these barriers.

18           47. Rush was also deterred from visiting the Target Facility because she  
19 knew that the Target Facility's goods, services, facilities, privileges, advantages,  
20 and accommodations were unavailable to physically disabled patrons (such as  
21 herself). She continues to be deterred from visiting the Target Facility because of  
22 the future threats of injury created by these barriers.

23           48. Rush was also deterred from visiting the Encinitas Ranch Town  
24 Center Facility because she knew that the Encinitas Ranch Town Center  
25 Facility's goods, services, facilities, privileges, advantages, and accommodations  
26 were unavailable to physically disabled patrons (such as herself). She continues  
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1 to be deterred from visiting the Encinitas Ranch Town Center Facility because of  
2 the future threats of injury created by these barriers.

3 49. Rush also encountered barriers at the facilities, which violate state  
4 and federal law, but were unrelated to her disability. Nothing within this  
5 complaint, however, should be construed as an allegation that Rush is seeking to  
6 remove barriers unrelated to his disability.

7 50. Party City knew that these elements and areas of the Party City  
8 Facility were inaccessible, violate state and federal law, and interfere with (or  
9 deny) access to the physically disabled. Moreover, Party City has the financial  
10 resources to remove these barriers from the Party City Facility (without much  
11 difficulty or expense), and make the Party City Facility accessible to the  
12 physically disabled. To date, however, Party City refuses to either remove those  
13 barriers or seek an unreasonable hardship exemption to excuse non-compliance.

14 51. At all relevant times, Party City has possessed and enjoyed sufficient  
15 control and authority to modify the Party City Facility to remove impediments to  
16 wheelchair access and to comply with the Americans with Disabilities Act  
17 Accessibility Guidelines and Title 24 regulations. Party City has not removed  
18 such impediments and has not modified the Party City Facility to conform to  
19 accessibility standards.

20 52. Office Depot knew that these elements and areas of the Office Depot  
21 Facility were inaccessible, violate state and federal law, and interfere with (or  
22 deny) access to the physically disabled. Moreover, Office Depot has the financial  
23 resources to remove these barriers from the Office Depot Facility (without much  
24 difficulty or expense), and make the Office Depot Facility accessible to the  
25 physically disabled. To date, however, Office Depot refuses to either remove  
26 those barriers or seek an unreasonable hardship exemption to excuse non-  
27 compliance.

1           53. At all relevant times, Office Depot has possessed and enjoyed  
2 sufficient control and authority to modify the Office Depot Facility to remove  
3 impediments to wheelchair access and to comply with the Americans with  
4 Disabilities Act Accessibility Guidelines and Title 24 regulations. Office Depot  
5 has not removed such impediments and has not modified the Office Depot  
6 Facility to conform to accessibility standards.

7           54. Best Buy knew that these elements and areas of the Best Buy  
8 Facility were inaccessible, violate state and federal law, and interfere with (or  
9 deny) access to the physically disabled. Moreover, Best Buy has the financial  
10 resources to remove these barriers from the Best Buy Facility (without much  
11 difficulty or expense), and make the Best Buy Facility accessible to the  
12 physically disabled. To date, however, Best Buy refuses to either remove those  
13 barriers or seek an unreasonable hardship exemption to excuse non-compliance.

14           55. At all relevant times, Best Buy has possessed and enjoyed sufficient  
15 control and authority to modify the Best Buy Facility to remove impediments to  
16 wheelchair access and to comply with the Americans with Disabilities Act  
17 Accessibility Guidelines and Title 24 regulations. Best Buy has not removed  
18 such impediments and has not modified the Best Buy Facility to conform to  
19 accessibility standards.

20           56. Ross Dress for Less knew that these elements and areas of the Ross  
21 Dress for Less Facility were inaccessible, violate state and federal law, and  
22 interfere with (or deny) access to the physically disabled. Moreover, Ross Dress  
23 for Less has the financial resources to remove these barriers from the Ross Dress  
24 for Less Facility (without much difficulty or expense), and make the Ross Dress  
25 for Less Facility accessible to the physically disabled. To date, however, Ross  
26 Dress for Less refuses to either remove those barriers or seek an unreasonable  
27 hardship exemption to excuse non-compliance.

1           57. At all relevant times, Ross Dress for Less has possessed and enjoyed  
2 sufficient control and authority to modify the Ross Dress for Less Facility to  
3 remove impediments to wheelchair access and to comply with the Americans  
4 with Disabilities Act Accessibility Guidelines and Title 24 regulations. Ross  
5 Dress for Less has not removed such impediments and has not modified the Ross  
6 Dress for Less Facility to conform to accessibility standards.

7           58. Barnes & Noble knew that these elements and areas of the Barnes &  
8 Noble Facility were inaccessible, violate state and federal law, and interfere with  
9 (or deny) access to the physically disabled. Moreover, Barnes & Noble has the  
10 financial resources to remove these barriers from the Barnes & Noble Facility  
11 (without much difficulty or expense), and make the Barnes & Noble Facility  
12 accessible to the physically disabled. To date, however, Barnes & Noble refuses  
13 to either remove those barriers or seek an unreasonable hardship exemption to  
14 excuse non-compliance.

15           59. At all relevant times, Barnes & Noble has possessed and enjoyed  
16 sufficient control and authority to modify the Barnes & Noble Facility to remove  
17 impediments to wheelchair access and to comply with the Americans with  
18 Disabilities Act Accessibility Guidelines and Title 24 regulations. Barnes &  
19 Noble has not removed such impediments and has not modified the Barnes &  
20 Noble Facility to conform to accessibility standards.

21           60. Stater Bros. knew that these elements and areas of the Stater Bros.  
22 Facility were inaccessible, violate state and federal law, and interfere with (or  
23 deny) access to the physically disabled. Moreover, Stater Bros. has the financial  
24 resources to remove these barriers from the Stater Bros. Facility (without much  
25 difficulty or expense), and make the Stater Bros. Facility accessible to the  
26 physically disabled. To date, however, Stater Bros. refuses to either remove  
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1 those barriers or seek an unreasonable hardship exemption to excuse non-  
2 compliance.

3 61. At all relevant times, Stater Bros. has possessed and enjoyed  
4 sufficient control and authority to modify the Stater Bros. Facility to remove  
5 impediments to wheelchair access and to comply with the Americans with  
6 Disabilities Act Accessibility Guidelines and Title 24 regulations. Stater Bros.  
7 has not removed such impediments and has not modified the Stater Bros. Facility  
8 to conform to accessibility standards.

9 62. McDonald's knew that these elements and areas of the McDonald's  
10 Facility were inaccessible, violate state and federal law, and interfere with (or  
11 deny) access to the physically disabled. Moreover, McDonald's has the financial  
12 resources to remove these barriers from the McDonald's Facility (without much  
13 difficulty or expense), and make the McDonald's Facility accessible to the  
14 physically disabled. To date, however, McDonald's refuses to either remove  
15 those barriers or seek an unreasonable hardship exemption to excuse non-  
16 compliance.

17 63. At all relevant times, McDonald's has possessed and enjoyed  
18 sufficient control and authority to modify the McDonald's Facility to remove  
19 impediments to wheelchair access and to comply with the Americans with  
20 Disabilities Act Accessibility Guidelines and Title 24 regulations. McDonald's  
21 has not removed such impediments and has not modified the McDonald's  
22 Facility to conform to accessibility standards.

23 64. Petsmart knew that these elements and areas of the Petsmart Facility  
24 were inaccessible, violate state and federal law, and interfere with (or deny)  
25 access to the physically disabled. Moreover, Petsmart has the financial resources  
26 to remove these barriers from the Petsmart Facility (without much difficulty or  
27 expense), and make the Petsmart Facility accessible to the physically disabled.

1 To date, however, Petsmart refuses to either remove those barriers or seek an  
2 unreasonable hardship exemption to excuse non-compliance.

3 65. At all relevant times, Petsmart has possessed and enjoyed sufficient  
4 control and authority to modify the Petsmart Facility to remove impediments to  
5 wheelchair access and to comply with the Americans with Disabilities Act  
6 Accessibility Guidelines and Title 24 regulations. Petsmart has not removed such  
7 impediments and has not modified the Petsmart Facility to conform to  
8 accessibility standards.

9 66. Target knew that these elements and areas of the Target Facility  
10 were inaccessible, violate state and federal law, and interfere with (or deny)  
11 access to the physically disabled. Moreover, Target has the financial resources to  
12 remove these barriers from the Target Facility (without much difficulty or  
13 expense), and make the Target Facility accessible to the physically disabled. To  
14 date, however, Target refuses to either remove those barriers or seek an  
15 unreasonable hardship exemption to excuse non-compliance.

16 67. At all relevant times, Target has possessed and enjoyed sufficient  
17 control and authority to modify the Target Facility to remove impediments to  
18 wheelchair access and to comply with the Americans with Disabilities Act  
19 Accessibility Guidelines and Title 24 regulations. Target has not removed such  
20 impediments and has not modified the Target Facility to conform to accessibility  
21 standards.

22 68. Encinitas Ranch Town Center knew that these elements and areas of  
23 the Encinitas Ranch Town Center Facility were inaccessible, violate state and  
24 federal law, and interfere with (or deny) access to the physically disabled.  
25 Moreover, Encinitas Ranch Town Center has the financial resources to remove  
26 these barriers from the Encinitas Ranch Town Center Facility (without much  
27 difficulty or expense), and make the Encinitas Ranch Town Center Facility  
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1 accessible to the physically disabled. To date, however, Encinitas Ranch Town  
2 Center refuses to either remove those barriers or seek an unreasonable hardship  
3 exemption to excuse non-compliance.

4 69. At all relevant times, Encinitas Ranch Town Center has possessed  
5 and enjoyed sufficient control and authority to modify the Encinitas Ranch Town  
6 Center Facility to remove impediments to wheelchair access and to comply with  
7 the Americans with Disabilities Act Accessibility Guidelines and Title 24  
8 regulations. Encinitas Ranch Town Center has not removed such impediments  
9 and has not modified the Encinitas Ranch Town Center Facility to conform to  
10 accessibility standards.

## 11 VI. FIRST CLAIM

### 12 **Americans with Disabilities Act of 1990**

#### 13 Denial of “Full and Equal” Enjoyment and Use

#### 14 (The Party City Facility)

15 70. Rush incorporates the allegations contained in paragraphs 1 through  
16 69 for this claim.

17 71. Title III of the ADA holds as a “general rule” that no individual shall  
18 be discriminated against on the basis of disability in the full and equal enjoyment  
19 (or use) of goods, services, facilities, privileges, and accommodations offered by  
20 any person who owns, operates, or leases a place of public accommodation. 42  
21 U.S.C. § 12182(a).

22 72. Party City discriminated against Rush by denying “full and equal  
23 enjoyment” and use of the goods, services, facilities, privileges or  
24 accommodations of the Party City Facility during each visit and each incident of  
25 deterrence.



1                   Failure to Remove Architectural Barriers in an Existing Facility

2           73. The ADA specifically prohibits failing to remove architectural  
3 barriers, which are structural in nature, in existing facilities where such removal  
4 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily  
5 achievable” is defined as “easily accomplishable and able to be carried out  
6 without much difficulty or expense.” Id. § 12181(9).

7           74. When an entity can demonstrate that removal of a barrier is not  
8 readily achievable, a failure to make goods, services, facilities, or  
9 accommodations available through alternative methods is also specifically  
10 prohibited if these methods are readily achievable. Id. § 12182(b)(2)(A)(v).

11           75. Here, Rush alleges that Party City can easily remove the  
12 architectural barriers at Party City Facility without much difficulty or expense,  
13 and that Party City violated the ADA by failing to remove those barriers, when it  
14 was readily achievable to do so.

15           76. In the alternative, if it was not “readily achievable” for Party City to  
16 remove the Party City Facility’s barriers, then Party City violated the ADA by  
17 failing to make the required services available through alternative methods,  
18 which are readily achievable.

19                   Failure to Design and Construct an Accessible Facility

20           77. On information and belief, the Party City Facility was designed or  
21 constructed (or both) after January 26, 1992—independently triggering access  
22 requirements under Title III of the ADA.

23           78. The ADA also prohibits designing and constructing facilities for first  
24 occupancy after January 26, 1993, that aren’t readily accessible to, and usable by,  
25 individuals with disabilities when it was structurally practicable to do so. 42  
26 U.S.C. § 12183(a)(1).

79. Here, Party City violated the ADA by designing or constructing (or both) the Party City Facility in a manner that was not readily accessible to the physically disabled public—including Rush—when it was structurally practical to do so.<sup>1</sup>

#### Failure to Make an Altered Facility Accessible

80. On information and belief, the Party City Facility was modified after January 26, 1992, independently triggering access requirements under the ADA.

81. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's primary function also requires adding making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. *Id.*

82. Here, Party City altered the Party City Facility in a manner that violated the ADA and was not readily accessible to the physically disabled public—including Rush—to the maximum extent feasible.

#### Failure to Modify Existing Policies and Procedures

83. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

84. Here, Party City violated the ADA by failing to make reasonable modifications in policies, practices, or procedures at the Party City Facility, when

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<sup>1</sup> Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.  
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1 these modifications were necessary to afford (and would not fundamentally alter  
2 the nature of) these goods, services, facilities, or accommodations.

3 85. Rush seeks all relief available under the ADA (*i.e.*, injunctive relief,  
4 attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C.  
5 § 12205.

6 86. Rush also seeks a finding from this Court (*i.e.*, declaratory relief)  
7 that Party City violated the ADA in order to pursue damages under California's  
8 Unruh Civil Rights Act or Disabled Persons Act.

9 VII. SECOND CLAIM

10 **Disabled Persons Act**

11 (The Party City Facility)

12 87. Rush incorporates the allegations contained in paragraphs 1 through  
13 86 for this claim.

14 88. California Civil Code § 54 states, in part, that: Individuals with  
15 disabilities have the same right as the general public to the full and free use of the  
16 streets, sidewalks, walkways, public buildings and facilities, and other public  
17 places.

18 89. California Civil Code § 54.1 also states, in part, that: Individuals  
19 with disabilities shall be entitled to full and equal access to accommodations,  
20 facilities, telephone facilities, places of public accommodation, and other places  
21 to which the general public is invited.

22 90. Both sections specifically incorporate (by reference) an individual's  
23 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

24 91. Here, Party City discriminated against the physically disabled  
25 public—including Rush—by denying them full and equal access to the Party City  
26 Facility. Party City also violated Rush's rights under the ADA, and, therefore,  
27  
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1 infringed upon or violated (or both) Rush's rights under the Disabled Persons  
2 Act.

3 92. For each offense of the Disabled Persons Act, Rush seeks actual  
4 damages (both general and special damages), statutory minimum damages of one  
5 thousand dollars (\$1,000), declaratory relief, and any other remedy available  
6 under California Civil Code § 54.3.

7 93. She also seeks to enjoin Party City from violating the Disabled  
8 Persons Act (and ADA) under California Civil Code § 55, and to recover  
9 reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and  
10 55.

11 VIII. THIRD CLAIM

12 **Unruh Civil Rights Act**

13 (The Party City Facility)

14 94. Rush incorporates the allegations contained in paragraphs 1 through  
15 93 for this claim.

16 95. California Civil Code § 51 states, in part, that: All persons within the  
17 jurisdiction of this state are entitled to the full and equal accommodations,  
18 advantages, facilities, privileges, or services in all business establishments of  
19 every kind whatsoever.

20 96. California Civil Code § 51.5 also states, in part, that: No business  
21 establishment of any kind whatsoever shall discriminate against any person in  
22 this state because of the disability of the person.

23 97. California Civil Code § 51(f) specifically incorporates (by reference)  
24 an individual's rights under the ADA into the Unruh Act.

25 98. Party City's aforementioned acts and omissions denied the  
26 physically disabled public—including Rush—full and equal accommodations,  
27

1 advantages, facilities, privileges and services in a business establishment  
2 (because of their physical disability).

3 99. These acts and omissions (including the ones that violate the ADA)  
4 denied, aided or incited a denial, or discriminated against Rush by violating the  
5 Unruh Act.

6 100. Rush was damaged by Party City's wrongful conduct, and seeks  
7 statutory minimum damages of four thousand dollars (\$4,000) for each offense.

8 101. Rush also seeks to enjoin Party City from violating the Unruh Act  
9 (and ADA), and recover reasonable attorneys' fees and costs incurred under  
10 California Civil Code § 52(a).

11 IX. FOURTH CLAIM

12 **Denial of Full and Equal Access to Public Facilities**

13 (The Party City Facility)

14 102. Rush incorporates the allegations contained in paragraphs 1 through  
15 101 for this claim.

16 103. Health and Safety Code § 19955(a) states, in part, that: California  
17 public accommodations or facilities (built with private funds) shall adhere to the  
18 provisions of Government Code § 4450.

19 104. Health and Safety Code § 19959 states, in part, that: Every existing  
20 (non-exempt) public accommodation constructed prior to July 1, 1970, which is  
21 altered or structurally repaired, is required to comply with this chapter.

22 105. Rush alleges the Party City Facility is a public accommodation  
23 constructed, altered, or repaired in a manner that violates Part 5.5 of the Health  
24 and Safety Code or Government Code § 4450 (or both), and that the Party City  
25 Facility was not exempt under Health and Safety Code § 19956.

26 106. Party City's non-compliance with these requirements at the Party  
27 City Facility aggrieved (or potentially aggrieved) Rush and other persons with  
28

1 physical disabilities. Accordingly, she seeks injunctive relief and attorney fees  
2 pursuant to Health and Safety Code § 19953.

3 X. FIFTH CLAIM

4 **Americans with Disabilities Act of 1990**

5 Denial of “Full and Equal” Enjoyment and Use

6 (The Office Depot Facility)

7 107. Rush incorporates the allegations contained in paragraphs 1 through  
8 106 for this claim.

9 108. Title III of the ADA holds as a “general rule” that no individual shall  
10 be discriminated against on the basis of disability in the full and equal enjoyment  
11 (or use) of goods, services, facilities, privileges, and accommodations offered by  
12 any person who owns, operates, or leases a place of public accommodation. 42  
13 U.S.C. § 12182(a).

14 109. Office Depot discriminated against Rush by denying “full and equal  
15 enjoyment” and use of the goods, services, facilities, privileges or  
16 accommodations of the Office Depot Facility during each visit and each incident  
17 of deterrence.

18 Failure to Remove Architectural Barriers in an Existing Facility

19 110. The ADA specifically prohibits failing to remove architectural  
20 barriers, which are structural in nature, in existing facilities where such removal  
21 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily  
22 achievable” is defined as “easily accomplishable and able to be carried out  
23 without much difficulty or expense.” Id. § 12181(9).

24 111. When an entity can demonstrate that removal of a barrier is not  
25 readily achievable, a failure to make goods, services, facilities, or  
26 accommodations available through alternative methods is also specifically  
27 prohibited if these methods are readily achievable. Id. § 12182(b)(2)(A)(v).

112. Here, Rush alleges that Office Depot can easily remove the architectural barriers at Office Depot Facility without much difficulty or expense, and that Office Depot violated the ADA by failing to remove those barriers, when it was readily achievable to do so.

113. In the alternative, if it was not “readily achievable” for Office Depot to remove the Office Depot Facility’s barriers, then Office Depot violated the ADA by failing to make the required services available through alternative methods, which are readily achievable.

#### Failure to Design and Construct an Accessible Facility

114. On information and belief, the Office Depot Facility was designed or constructed (or both) after January 26, 1992—independently triggering access requirements under Title III of the ADA.

115. The ADA also prohibits designing and constructing facilities for first occupancy after January 26, 1993, that aren’t readily accessible to, and usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

116. Here, Office Depot violated the ADA by designing or constructing (or both) the Office Depot Facility in a manner that was not readily accessible to the physically disabled public—including Rush—when it was structurally practical to do so.<sup>2</sup>

#### Failure to Make an Altered Facility Accessible

117. On information and belief, the Office Depot Facility was modified after January 26, 1992, independently triggering access requirements under the ADA.

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<sup>2</sup> Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.  
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1           118. The ADA also requires that facilities altered in a manner that affects  
2 (or could affect) its usability must be made readily accessible to individuals with  
3 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an  
4 area that contains a facility's primary function also requires adding making the  
5 paths of travel, bathrooms, telephones, and drinking fountains serving that area  
6 accessible to the maximum extent feasible. Id.

7           119. Here, Office Depot altered the Office Depot Facility in a manner  
8 that violated the ADA and was not readily accessible to the physically disabled  
9 public—including Rush—to the maximum extent feasible.

10                   Failure to Modify Existing Policies and Procedures

11           120. The ADA also requires reasonable modifications in policies,  
12 practices, or procedures, when necessary to afford such goods, services, facilities,  
13 or accommodations to individuals with disabilities, unless the entity can  
14 demonstrate that making such modifications would fundamentally alter their  
15 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

16           121. Here, Office Depot violated the ADA by failing to make reasonable  
17 modifications in policies, practices, or procedures at the Office Depot Facility,  
18 when these modifications were necessary to afford (and would not fundamentally  
19 alter the nature of) these goods, services, facilities, or accommodations.

20           122. Rush seeks all relief available under the ADA (*i.e.*, injunctive relief,  
21 attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C.  
22 § 12205.

23           123. Rush also seeks a finding from this Court (*i.e.*, declaratory relief)  
24 that Office Depot violated the ADA in order to pursue damages under  
25 California's Unruh Civil Rights Act or Disabled Persons Act.



XI. SIXTH CLAIM

**Disabled Persons Act**

(The Office Depot Facility)

124. Rush incorporates the allegations contained in paragraphs 1 through 123 for this claim.

125. California Civil Code § 54 states, in part, that: Individuals with disabilities have the same right as the general public to the full and free use of the streets, sidewalks, walkways, public buildings and facilities, and other public places.

126. California Civil Code § 54.1 also states, in part, that: Individuals with disabilities shall be entitled to full and equal access to accommodations, facilities, telephone facilities, places of public accommodation, and other places to which the general public is invited.

127. Both sections specifically incorporate (by reference) an individual's rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

128. Here, Office Depot discriminated against the physically disabled public—including Rush—by denying them full and equal access to the Office Depot Facility. Office Depot also violated Rush's rights under the ADA, and, therefore, infringed upon or violated (or both) Rush's rights under the Disabled Persons Act.

129. For each offense of the Disabled Persons Act, Rush seeks actual damages (both general and special damages), statutory minimum damages of one thousand dollars (\$1,000), declaratory relief, and any other remedy available under California Civil Code § 54.3.

130. She also seeks to enjoin Office Depot from violating the Disabled Persons Act (and ADA) under California Civil Code § 55, and to recover

1 reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and  
2 55.

3 XII. SEVENTH CLAIM

4 **Unruh Civil Rights Act**

5 (The Office Depot Facility)

6 131. Rush incorporates the allegations contained in paragraphs 1 through  
7 130 for this claim.

8 132. California Civil Code § 51 states, in part, that: All persons within the  
9 jurisdiction of this state are entitled to the full and equal accommodations,  
10 advantages, facilities, privileges, or services in all business establishments of  
11 every kind whatsoever.

12 133. California Civil Code § 51.5 also states, in part, that: No business  
13 establishment of any kind whatsoever shall discriminate against any person in  
14 this state because of the disability of the person.

15 134. California Civil Code § 51(f) specifically incorporates (by reference)  
16 an individual's rights under the ADA into the Unruh Act.

17 135. Office Depot's aforementioned acts and omissions denied the  
18 physically disabled public—including Rush—full and equal accommodations,  
19 advantages, facilities, privileges and services in a business establishment  
20 (because of their physical disability).

21 136. These acts and omissions (including the ones that violate the ADA)  
22 denied, aided or incited a denial, or discriminated against Rush by violating the  
23 Unruh Act.

24 137. Rush was damaged by Office Depot's wrongful conduct, and seeks  
25 statutory minimum damages of four thousand dollars (\$4,000) for each offense.

1           138. Rush also seeks to enjoin Office Depot from violating the Unruh Act  
2 (and ADA), and recover reasonable attorneys' fees and costs incurred under  
3 California Civil Code § 52(a).

4   XIII. EIGHTH CLAIM

5   **Denial of Full and Equal Access to Public Facilities**

6   (The Office Depot Facility)

7           139. Rush incorporates the allegations contained in paragraphs 1 through  
8 138 for this claim.

9           140. Health and Safety Code § 19955(a) states, in part, that: California  
10 public accommodations or facilities (built with private funds) shall adhere to the  
11 provisions of Government Code § 4450.

12           141. Health and Safety Code § 19959 states, in part, that: Every existing  
13 (non-exempt) public accommodation constructed prior to July 1, 1970, which is  
14 altered or structurally repaired, is required to comply with this chapter.

15           142. Rush alleges the Office Depot Facility is a public accommodation  
16 constructed, altered, or repaired in a manner that violates Part 5.5 of the Health  
17 and Safety Code or Government Code § 4450 (or both), and that the Office Depot  
18 Facility was not exempt under Health and Safety Code § 19956.

19           143. Office Depot's non-compliance with these requirements at the Office  
20 Depot Facility aggrieved (or potentially aggrieved) Rush and other persons with  
21 physical disabilities. Accordingly, she seeks injunctive relief and attorney fees  
22 pursuant to Health and Safety Code § 19953.

XIV. NINTH CLAIM

**Americans with Disabilities Act of 1990**

**Denial of “Full and Equal” Enjoyment and Use**

**(The Best Buy Facility)**

144. Rush incorporates the allegations contained in paragraphs 1 through 143 for this claim.

145. Title III of the ADA holds as a “general rule” that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

146. Best Buy discriminated against Rush by denying “full and equal enjoyment” and use of the goods, services, facilities, privileges or accommodations of the Best Buy Facility during each visit and each incident of deterrence.

**Failure to Remove Architectural Barriers in an Existing Facility**

147. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily achievable” is defined as “easily accomplishable and able to be carried out without much difficulty or expense.” *Id.* § 12181(9).

148. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

149. Here, Rush alleges that Best Buy can easily remove the architectural barriers at Best Buy Facility without much difficulty or expense, and that Best

1 Buy violated the ADA by failing to remove those barriers, when it was readily  
2 achievable to do so.

3 150. In the alternative, if it was not “readily achievable” for Best Buy to  
4 remove the Best Buy Facility’s barriers, then Best Buy violated the ADA by  
5 failing to make the required services available through alternative methods,  
6 which are readily achievable.

7 Failure to Design and Construct an Accessible Facility

8 151. On information and belief, the Best Buy Facility was designed or  
9 constructed (or both) after January 26, 1992—independently triggering access  
10 requirements under Title III of the ADA.

11 152. The ADA also prohibits designing and constructing facilities for first  
12 occupancy after January 26, 1993, that aren’t readily accessible to, and usable by,  
13 individuals with disabilities when it was structurally practicable to do so. 42  
14 U.S.C. § 12183(a)(1).

15 153. Here, Best Buy violated the ADA by designing or constructing (or  
16 both) the Best Buy Facility in a manner that was not readily accessible to the  
17 physically disabled public—including Rush—when it was structurally practical  
18 to do so.<sup>3</sup>

19 Failure to Make an Altered Facility Accessible

20 154. On information and belief, the Best Buy Facility was modified after  
21 January 26, 1992, independently triggering access requirements under the ADA.

22 155. The ADA also requires that facilities altered in a manner that affects  
23 (or could affect) its usability must be made readily accessible to individuals with  
24 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an  
25 area that contains a facility’s primary function also requires adding making the  
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27 <sup>3</sup> Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a  
28 private attorney general under either state or federal statutes.  
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1 paths of travel, bathrooms, telephones, and drinking fountains serving that area  
2 accessible to the maximum extent feasible. Id.

3 156. Here, Best Buy altered the Best Buy Facility in a manner that  
4 violated the ADA and was not readily accessible to the physically disabled  
5 public—including Rush—to the maximum extent feasible.

6 Failure to Modify Existing Policies and Procedures

7 157. The ADA also requires reasonable modifications in policies,  
8 practices, or procedures, when necessary to afford such goods, services, facilities,  
9 or accommodations to individuals with disabilities, unless the entity can  
10 demonstrate that making such modifications would fundamentally alter their  
11 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

12 158. Here, Best Buy violated the ADA by failing to make reasonable  
13 modifications in policies, practices, or procedures at the Best Buy Facility, when  
14 these modifications were necessary to afford (and would not fundamentally alter  
15 the nature of) these goods, services, facilities, or accommodations.

16 159. Rush seeks all relief available under the ADA (*i.e.*, injunctive relief,  
17 attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C.  
18 § 12205.

19 160. Rush also seeks a finding from this Court (*i.e.*, declaratory relief)  
20 that Best Buy violated the ADA in order to pursue damages under California's  
21 Unruh Civil Rights Act or Disabled Persons Act.

22 **XV. TENTH CLAIM**

23 **Disabled Persons Act**

24 **(The Best Buy Facility)**

25 161. Rush incorporates the allegations contained in paragraphs 1 through  
26 160 for this claim.

1           162. California Civil Code § 54 states, in part, that: Individuals with  
2 disabilities have the same right as the general public to the full and free use of the  
3 streets, sidewalks, walkways, public buildings and facilities, and other public  
4 places.

5           163. California Civil Code § 54.1 also states, in part, that: Individuals  
6 with disabilities shall be entitled to full and equal access to accommodations,  
7 facilities, telephone facilities, places of public accommodation, and other places  
8 to which the general public is invited.

9           164. Both sections specifically incorporate (by reference) an individual's  
10 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

11           165. Here, Best Buy discriminated against the physically disabled  
12 public—including Rush—by denying them full and equal access to the Best Buy  
13 Facility. Best Buy also violated Rush's rights under the ADA, and, therefore,  
14 infringed upon or violated (or both) Rush's rights under the Disabled Persons  
15 Act.

16           166. For each offense of the Disabled Persons Act, Rush seeks actual  
17 damages (both general and special damages), statutory minimum damages of one  
18 thousand dollars (\$1,000), declaratory relief, and any other remedy available  
19 under California Civil Code § 54.3.

20           167. She also seeks to enjoin Best Buy from violating the Disabled  
21 Persons Act (and ADA) under California Civil Code § 55, and to recover  
22 reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and  
23 55.

XVI. ELEVENTH CLAIM

**Unruh Civil Rights Act**

(The Best Buy Facility)

168. Rush incorporates the allegations contained in paragraphs 1 through 167 for this claim.

169. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

170. California Civil Code § 51.5 also states, in part, that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

171. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

172. Best Buy's aforementioned acts and omissions denied the physically disabled public—including Rush—full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

173. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Rush by violating the Unruh Act.

174. Rush was damaged by Best Buy's wrongful conduct, and seeks statutory minimum damages of four thousand dollars (\$4,000) for each offense.

175. Rush also seeks to enjoin Best Buy from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).



XVII. TWELFTH CLAIM

**Denial of Full and Equal Access to Public Facilities**

(The Best Buy Facility)

176. Rush incorporates the allegations contained in paragraphs 1 through 175 for this claim.

177. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

178. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

179. Rush alleges the Best Buy Facility is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Best Buy Facility was not exempt under Health and Safety Code § 19956.

180. Best Buy's non-compliance with these requirements at the Best Buy Facility aggrieved (or potentially aggrieved) Rush and other persons with physical disabilities. Accordingly, she seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

XVIII. THIRTEENTH CLAIM

**Americans with Disabilities Act of 1990**

Denial of "Full and Equal" Enjoyment and Use

(The Ross Dress for Less Facility)

181. Rush incorporates the allegations contained in paragraphs 1 through 180 for this claim.

182. Title III of the ADA holds as a "general rule" that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment

1 (or use) of goods, services, facilities, privileges, and accommodations offered by  
2 any person who owns, operates, or leases a place of public accommodation. 42  
3 U.S.C. § 12182(a).

4 183. Ross Dress for Less discriminated against Rush by denying “full and  
5 equal enjoyment” and use of the goods, services, facilities, privileges or  
6 accommodations of the Ross Dress for Less Facility during each visit and each  
7 incident of deterrence.

8 Failure to Remove Architectural Barriers in an Existing Facility

9 184. The ADA specifically prohibits failing to remove architectural  
10 barriers, which are structural in nature, in existing facilities where such removal  
11 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily  
12 achievable” is defined as “easily accomplishable and able to be carried out  
13 without much difficulty or expense.” *Id.* § 12181(9).

14 185. When an entity can demonstrate that removal of a barrier is not  
15 readily achievable, a failure to make goods, services, facilities, or  
16 accommodations available through alternative methods is also specifically  
17 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

18 186. Here, Rush alleges that Ross Dress for Less can easily remove the  
19 architectural barriers at Ross Dress for Less Facility without much difficulty or  
20 expense, and that Ross Dress for Less violated the ADA by failing to remove  
21 those barriers, when it was readily achievable to do so.

22 187. In the alternative, if it was not “readily achievable” for Ross Dress  
23 for Less to remove the Ross Dress for Less Facility’s barriers, then Ross Dress  
24 for Less violated the ADA by failing to make the required services available  
25 through alternative methods, which are readily achievable.

1                    Failure to Design and Construct an Accessible Facility

2            188. On information and belief, the Ross Dress for Less Facility was  
3 designed or constructed (or both) after January 26, 1992—independently  
4 triggering access requirements under Title III of the ADA.

5            189. The ADA also prohibits designing and constructing facilities for first  
6 occupancy after January 26, 1993, that aren't readily accessible to, and usable by,  
7 individuals with disabilities when it was structurally practicable to do so. 42  
8 U.S.C. § 12183(a)(1).

9            190. Here, Ross Dress for Less violated the ADA by designing or  
10 constructing (or both) the Ross Dress for Less Facility in a manner that was not  
11 readily accessible to the physically disabled public—including Rush—when it  
12 was structurally practical to do so.<sup>4</sup>

13                    Failure to Make an Altered Facility Accessible

14            191. On information and belief, the Ross Dress for Less Facility was  
15 modified after January 26, 1992, independently triggering access requirements  
16 under the ADA.

17            192. The ADA also requires that facilities altered in a manner that affects  
18 (or could affect) its usability must be made readily accessible to individuals with  
19 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an  
20 area that contains a facility's primary function also requires adding making the  
21 paths of travel, bathrooms, telephones, and drinking fountains serving that area  
22 accessible to the maximum extent feasible. *Id.*

23            193. Here, Ross Dress for Less altered the Ross Dress for Less Facility in  
24 a manner that violated the ADA and was not readily accessible to the physically  
25 disabled public—including Rush—to the maximum extent feasible.

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28            <sup>4</sup> Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.  
*Rush v. Encinitas Town Center Associates I, LLC, et al.*  
Plaintiff's Complaint

Failure to Modify Existing Policies and Procedures

194. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

195. Here, Ross Dress for Less violated the ADA by failing to make reasonable modifications in policies, practices, or procedures at the Ross Dress for Less Facility, when these modifications were necessary to afford (and would not fundamentally alter the nature of) these goods, services, facilities, or accommodations.

196. Rush seeks all relief available under the ADA (*i.e.*, injunctive relief, attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

197. Rush also seeks a finding from this Court (*i.e.*, declaratory relief) that Ross Dress for Less violated the ADA in order to pursue damages under California's Unruh Civil Rights Act or Disabled Persons Act.

**XIX. FOURTEENTH CLAIM**

**Disabled Persons Act**

(The Ross Dress for Less Facility)

198. Rush incorporates the allegations contained in paragraphs 1 through 197 for this claim.

199. California Civil Code § 54 states, in part, that: Individuals with disabilities have the same right as the general public to the full and free use of the streets, sidewalks, walkways, public buildings and facilities, and other public places.

1       200. California Civil Code § 54.1 also states, in part, that: Individuals  
2 with disabilities shall be entitled to full and equal access to accommodations,  
3 facilities, telephone facilities, places of public accommodation, and other places  
4 to which the general public is invited.

5       201. Both sections specifically incorporate (by reference) an individual's  
6 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

7       202. Here, Ross Dress for Less discriminated against the physically  
8 disabled public—including Rush—by denying them full and equal access to the  
9 Ross Dress for Less Facility. Ross Dress for Less also violated Rush's rights  
10 under the ADA, and, therefore, infringed upon or violated (or both) Rush's rights  
11 under the Disabled Persons Act.

12       203. For each offense of the Disabled Persons Act, Rush seeks actual  
13 damages (both general and special damages), statutory minimum damages of one  
14 thousand dollars (\$1,000), declaratory relief, and any other remedy available  
15 under California Civil Code § 54.3.

16       204. She also seeks to enjoin Ross Dress for Less from violating the  
17 Disabled Persons Act (and ADA) under California Civil Code § 55, and to  
18 recover reasonable attorneys' fees and incurred under California Civil Code §§  
19 54.3 and 55.

20                               XX. FIFTEENTH CLAIM

21                               **Unruh Civil Rights Act**

22                               (The Ross Dress for Less Facility)

23       205. Rush incorporates the allegations contained in paragraphs 1 through  
24 204 for this claim.

25       206. California Civil Code § 51 states, in part, that: All persons within the  
26 jurisdiction of this state are entitled to the full and equal accommodations,  
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1 advantages, facilities, privileges, or services in all business establishments of  
2 every kind whatsoever.

3 207. California Civil Code § 51.5 also states, in part, that: No business  
4 establishment of any kind whatsoever shall discriminate against any person in  
5 this state because of the disability of the person.

6 208. California Civil Code § 51(f) specifically incorporates (by reference)  
7 an individual's rights under the ADA into the Unruh Act.

8 209. Ross Dress for Less's aforementioned acts and omissions denied the  
9 physically disabled public—including Rush—full and equal accommodations,  
10 advantages, facilities, privileges and services in a business establishment  
11 (because of their physical disability).

12 210. These acts and omissions (including the ones that violate the ADA)  
13 denied, aided or incited a denial, or discriminated against Rush by violating the  
14 Unruh Act.

15 211. Rush was damaged by Ross Dress for Less's wrongful conduct, and  
16 seeks statutory minimum damages of four thousand dollars (\$4,000) for each  
17 offense.

18 212. Rush also seeks to enjoin Ross Dress for Less from violating the  
19 Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred  
20 under California Civil Code § 52(a).

21 **XXI. SIXTEENTH CLAIM**

22 **Denial of Full and Equal Access to Public Facilities**

23 (The Ross Dress for Less Facility)

24 213. Rush incorporates the allegations contained in paragraphs 1 through  
25 212 for this claim.



1           220. Barnes & Noble discriminated against Rush by denying “full and  
2 equal enjoyment” and use of the goods, services, facilities, privileges or  
3 accommodations of the Barnes & Noble Facility during each visit and each  
4 incident of deterrence.

5                   Failure to Remove Architectural Barriers in an Existing Facility

6           221. The ADA specifically prohibits failing to remove architectural  
7 barriers, which are structural in nature, in existing facilities where such removal  
8 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily  
9 achievable” is defined as “easily accomplishable and able to be carried out  
10 without much difficulty or expense.” *Id.* § 12181(9).

11           222. When an entity can demonstrate that removal of a barrier is not  
12 readily achievable, a failure to make goods, services, facilities, or  
13 accommodations available through alternative methods is also specifically  
14 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

15           223. Here, Rush alleges that Barnes & Noble can easily remove the  
16 architectural barriers at Barnes & Noble Facility without much difficulty or  
17 expense, and that Barnes & Noble violated the ADA by failing to remove those  
18 barriers, when it was readily achievable to do so.

19           224. In the alternative, if it was not “readily achievable” for Barnes &  
20 Noble to remove the Barnes & Noble Facility’s barriers, then Barnes & Noble  
21 violated the ADA by failing to make the required services available through  
22 alternative methods, which are readily achievable.

23                   Failure to Design and Construct an Accessible Facility

24           225. On information and belief, the Barnes & Noble Facility was  
25 designed or constructed (or both) after January 26, 1992—independently  
26 triggering access requirements under Title III of the ADA.



1           226. The ADA also prohibits designing and constructing facilities for first  
 2 occupancy after January 26, 1993, that aren't readily accessible to, and usable by,  
 3 individuals with disabilities when it was structurally practicable to do so. 42  
 4 U.S.C. § 12183(a)(1).

5           227. Here, Barnes & Noble violated the ADA by designing or  
 6 constructing (or both) the Barnes & Noble Facility in a manner that was not  
 7 readily accessible to the physically disabled public—including Rush—when it  
 8 was structurally practical to do so.<sup>5</sup>

9                           Failure to Make an Altered Facility Accessible

10           228. On information and belief, the Barnes & Noble Facility was  
 11 modified after January 26, 1992, independently triggering access requirements  
 12 under the ADA.

13           229. The ADA also requires that facilities altered in a manner that affects  
 14 (or could affect) its usability must be made readily accessible to individuals with  
 15 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an  
 16 area that contains a facility's primary function also requires adding making the  
 17 paths of travel, bathrooms, telephones, and drinking fountains serving that area  
 18 accessible to the maximum extent feasible. Id.

19           230. Here, Barnes & Noble altered the Barnes & Noble Facility in a  
 20 manner that violated the ADA and was not readily accessible to the physically  
 21 disabled public—including Rush—to the maximum extent feasible.

22                           Failure to Modify Existing Policies and Procedures

23           231. The ADA also requires reasonable modifications in policies,  
 24 practices, or procedures, when necessary to afford such goods, services, facilities,  
 25 or accommodations to individuals with disabilities, unless the entity can  
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27           <sup>5</sup> Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a  
 28 private attorney general under either state or federal statutes.  
*Rush v. Encinitas Town Center Associates I, LLC, et al.*  
 Plaintiff's Complaint

1 demonstrate that making such modifications would fundamentally alter their  
2 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

3 232. Here, Barnes & Noble violated the ADA by failing to make  
4 reasonable modifications in policies, practices, or procedures at the Barnes &  
5 Noble Facility, when these modifications were necessary to afford (and would  
6 not fundamentally alter the nature of) these goods, services, facilities, or  
7 accommodations.

8 233. Rush seeks all relief available under the ADA (*i.e.*, injunctive relief,  
9 attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C.  
10 § 12205.

11 234. Rush also seeks a finding from this Court (*i.e.*, declaratory relief)  
12 that Barnes & Noble violated the ADA in order to pursue damages under  
13 California's Unruh Civil Rights Act or Disabled Persons Act.

14 **XXIII. EIGHTEENTH CLAIM**

15 **Disabled Persons Act**

16 (The Barnes & Noble Facility)

17 235. Rush incorporates the allegations contained in paragraphs 1 through  
18 234 for this claim.

19 236. California Civil Code § 54 states, in part, that: Individuals with  
20 disabilities have the same right as the general public to the full and free use of the  
21 streets, sidewalks, walkways, public buildings and facilities, and other public  
22 places.

23 237. California Civil Code § 54.1 also states, in part, that: Individuals  
24 with disabilities shall be entitled to full and equal access to accommodations,  
25 facilities, telephone facilities, places of public accommodation, and other places  
26 to which the general public is invited.

238. Both sections specifically incorporate (by reference) an individual's rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

239. Here, Barnes & Noble discriminated against the physically disabled public—including Rush—by denying them full and equal access to the Barnes & Noble Facility. Barnes & Noble also violated Rush’s rights under the ADA, and, therefore, infringed upon or violated (or both) Rush’s rights under the Disabled Persons Act.

240. For each offense of the Disabled Persons Act, Rush seeks actual damages (both general and special damages), statutory minimum damages of one thousand dollars (\$1,000), declaratory relief, and any other remedy available under California Civil Code § 54.3.

241. She also seeks to enjoin Barnes & Noble from violating the Disabled Persons Act (and ADA) under California Civil Code § 55, and to recover reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and 55.

## XXIV. NINETEENTH CLAIM

## Unruh Civil Rights Act

(The Barnes & Noble Facility)

242. Rush incorporates the allegations contained in paragraphs 1 through 241 for this claim.

243. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

244. California Civil Code § 51.5 also states, in part, that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

245. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

246. Barnes & Noble's aforementioned acts and omissions denied the physically disabled public—including Rush—full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

247. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Rush by violating the Unruh Act.

248. Rush was damaged by Barnes & Noble's wrongful conduct, and seeks statutory minimum damages of four thousand dollars (\$4,000) for each offense.

249. Rush also seeks to enjoin Barnes & Noble from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

## XXV. TWENTIETH CLAIM

## Denial of Full and Equal Access to Public Facilities

(The Barnes & Noble Facility)

250. Rush incorporates the allegations contained in paragraphs 1 through 249 for this claim.

251. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

252. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

253. Rush alleges the Barnes & Noble Facility is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Barnes & Noble Facility was not exempt under Health and Safety Code § 19956.

254. Barnes & Noble's non-compliance with these requirements at the Barnes & Noble Facility aggrieved (or potentially aggrieved) Rush and other persons with physical disabilities. Accordingly, she seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

## XXVI. TWENTY-FIRST CLAIM

## Americans with Disabilities Act of 1990

## Denial of “Full and Equal” Enjoyment and Use

(The Stater Bros. Facility)

255. Rush incorporates the allegations contained in paragraphs 1 through 254 for this claim.

256. Title III of the ADA holds as a “general rule” that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

257. Stater Bros. discriminated against Rush by denying “full and equal enjoyment” and use of the goods, services, facilities, privileges or accommodations of the Stater Bros. Facility during each visit and each incident of deterrence.

## Failure to Remove Architectural Barriers in an Existing Facility

258. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily

1 achievable” is defined as “easily accomplishable and able to be carried out  
2 without much difficulty or expense.” Id. § 12181(9).

3 259. When an entity can demonstrate that removal of a barrier is not  
4 readily achievable, a failure to make goods, services, facilities, or  
5 accommodations available through alternative methods is also specifically  
6 prohibited if these methods are readily achievable. Id. § 12182(b)(2)(A)(v).

7 260. Here, Rush alleges that Stater Bros. can easily remove the  
8 architectural barriers at Stater Bros. Facility without much difficulty or expense,  
9 and that Stater Bros. violated the ADA by failing to remove those barriers, when  
10 it was readily achievable to do so.

11 261. In the alternative, if it was not “readily achievable” for Stater Bros.  
12 to remove the Stater Bros. Facility’s barriers, then Stater Bros. violated the ADA  
13 by failing to make the required services available through alternative methods,  
14 which are readily achievable.

15 Failure to Design and Construct an Accessible Facility

16 262. On information and belief, the Stater Bros. Facility was designed or  
17 constructed (or both) after January 26, 1992—independently triggering access  
18 requirements under Title III of the ADA.

19 263. The ADA also prohibits designing and constructing facilities for first  
20 occupancy after January 26, 1993, that aren’t readily accessible to, and usable by,  
21 individuals with disabilities when it was structurally practicable to do so. 42  
22 U.S.C. § 12183(a)(1).

23 264. Here, Stater Bros. violated the ADA by designing or constructing (or  
24 both) the Stater Bros. Facility in a manner that was not readily accessible to the  
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28

1 physically disabled public—including Rush—when it was structurally practical  
2 to do so.<sup>6</sup>

3 Failure to Make an Altered Facility Accessible

4 265. On information and belief, the Stater Bros. Facility was modified  
5 after January 26, 1992, independently triggering access requirements under the  
6 ADA.

7 266. The ADA also requires that facilities altered in a manner that affects  
8 (or could affect) its usability must be made readily accessible to individuals with  
9 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an  
10 area that contains a facility's primary function also requires adding making the  
11 paths of travel, bathrooms, telephones, and drinking fountains serving that area  
12 accessible to the maximum extent feasible. Id.

13 267. Here, Stater Bros. altered the Stater Bros. Facility in a manner that  
14 violated the ADA and was not readily accessible to the physically disabled  
15 public—including Rush—to the maximum extent feasible.

16 Failure to Modify Existing Policies and Procedures

17 268. The ADA also requires reasonable modifications in policies,  
18 practices, or procedures, when necessary to afford such goods, services, facilities,  
19 or accommodations to individuals with disabilities, unless the entity can  
20 demonstrate that making such modifications would fundamentally alter their  
21 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

22 269. Here, Stater Bros. violated the ADA by failing to make reasonable  
23 modifications in policies, practices, or procedures at the Stater Bros. Facility,  
24 when these modifications were necessary to afford (and would not fundamentally  
25 alter the nature of) these goods, services, facilities, or accommodations.

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28 <sup>6</sup> Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a  
private attorney general under either state or federal statutes.  
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277. For each offense of the Disabled Persons Act, Rush seeks actual damages (both general and special damages), statutory minimum damages of one thousand dollars (\$1,000), declaratory relief, and any other remedy available under California Civil Code § 54.3.

278. She also seeks to enjoin Stater Bros. from violating the Disabled Persons Act (and ADA) under California Civil Code § 55, and to recover reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and 55.

## XXVIII. TWENTY-THIRD CLAIM

## Unruh Civil Rights Act

(The Stater Bros. Facility)

279. Rush incorporates the allegations contained in paragraphs 1 through 278 for this claim.

280. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

281. California Civil Code § 51.5 also states, in part, that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

282. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

283. Stater Bros.'s aforementioned acts and omissions denied the physically disabled public—including Rush—full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

1           284. These acts and omissions (including the ones that violate the ADA)  
2 denied, aided or incited a denial, or discriminated against Rush by violating the  
3 Unruh Act.

4           285. Rush was damaged by Stater Bros.'s wrongful conduct, and seeks  
5 statutory minimum damages of four thousand dollars (\$4,000) for each offense.

6           286. Rush also seeks to enjoin Stater Bros. from violating the Unruh Act  
7 (and ADA), and recover reasonable attorneys' fees and costs incurred under  
8 California Civil Code § 52(a).

9   XXIX. TWENTY-FOURTH CLAIM

10                               **Denial of Full and Equal Access to Public Facilities**

11   (The Stater Bros. Facility)

12           287. Rush incorporates the allegations contained in paragraphs 1 through  
13 286 for this claim.

14           288. Health and Safety Code § 19955(a) states, in part, that: California  
15 public accommodations or facilities (built with private funds) shall adhere to the  
16 provisions of Government Code § 4450.

17           289. Health and Safety Code § 19959 states, in part, that: Every existing  
18 (non-exempt) public accommodation constructed prior to July 1, 1970, which is  
19 altered or structurally repaired, is required to comply with this chapter.

20           290. Rush alleges the Stater Bros. Facility is a public accommodation  
21 constructed, altered, or repaired in a manner that violates Part 5.5 of the Health  
22 and Safety Code or Government Code § 4450 (or both), and that the Stater Bros.  
23 Facility was not exempt under Health and Safety Code § 19956.

24           291. Stater Bros.'s non-compliance with these requirements at the Stater  
25 Bros. Facility aggrieved (or potentially aggrieved) Rush and other persons with  
26 physical disabilities. Accordingly, she seeks injunctive relief and attorney fees  
27 pursuant to Health and Safety Code § 19953.

XXX. TWENTY-FIFTH CLAIM

**Americans with Disabilities Act of 1990**

Denial of “Full and Equal” Enjoyment and Use

(The McDonald’s Facility)

292. Rush incorporates the allegations contained in paragraphs 1 through 291 for this claim.

293. Title III of the ADA holds as a “general rule” that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

294. McDonald’s discriminated against Rush by denying “full and equal enjoyment” and use of the goods, services, facilities, privileges or accommodations of the McDonald’s Facility during each visit and each incident of deterrence.

Failure to Remove Architectural Barriers in an Existing Facility

295. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily achievable” is defined as “easily accomplishable and able to be carried out without much difficulty or expense.” *Id.* § 12181(9).

296. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

297. Here, Rush alleges that McDonald’s can easily remove the architectural barriers at McDonald’s Facility without much difficulty or expense,

1 and that McDonald's violated the ADA by failing to remove those barriers, when  
2 it was readily achievable to do so.

3 298. In the alternative, if it was not "readily achievable" for McDonald's  
4 to remove the McDonald's Facility's barriers, then McDonald's violated the  
5 ADA by failing to make the required services available through alternative  
6 methods, which are readily achievable.

7 Failure to Design and Construct an Accessible Facility

8 299. On information and belief, the McDonald's Facility was designed or  
9 constructed (or both) after January 26, 1992—independently triggering access  
10 requirements under Title III of the ADA.

11 300. The ADA also prohibits designing and constructing facilities for first  
12 occupancy after January 26, 1993, that aren't readily accessible to, and usable by,  
13 individuals with disabilities when it was structurally practicable to do so. 42  
14 U.S.C. § 12183(a)(1).

15 301. Here, McDonald's violated the ADA by designing or constructing  
16 (or both) the McDonald's Facility in a manner that was not readily accessible to  
17 the physically disabled public—including Rush—when it was structurally  
18 practical to do so.<sup>7</sup>

19 Failure to Make an Altered Facility Accessible

20 302. On information and belief, the McDonald's Facility was modified  
21 after January 26, 1992, independently triggering access requirements under the  
22 ADA.

23 303. The ADA also requires that facilities altered in a manner that affects  
24 (or could affect) its usability must be made readily accessible to individuals with  
25 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an  
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27 <sup>7</sup> Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a  
28 private attorney general under either state or federal statutes.

1 area that contains a facility's primary function also requires adding making the  
2 paths of travel, bathrooms, telephones, and drinking fountains serving that area  
3 accessible to the maximum extent feasible. Id.

4 304. Here, McDonald's altered the McDonald's Facility in a manner that  
5 violated the ADA and was not readily accessible to the physically disabled  
6 public—including Rush—to the maximum extent feasible.

7 Failure to Modify Existing Policies and Procedures

8 305. The ADA also requires reasonable modifications in policies,  
9 practices, or procedures, when necessary to afford such goods, services, facilities,  
10 or accommodations to individuals with disabilities, unless the entity can  
11 demonstrate that making such modifications would fundamentally alter their  
12 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

13 306. Here, McDonald's violated the ADA by failing to make reasonable  
14 modifications in policies, practices, or procedures at the McDonald's Facility,  
15 when these modifications were necessary to afford (and would not fundamentally  
16 alter the nature of) these goods, services, facilities, or accommodations.

17 307. Rush seeks all relief available under the ADA (*i.e.*, injunctive relief,  
18 attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C.  
19 § 12205.

20 308. Rush also seeks a finding from this Court (*i.e.*, declaratory relief)  
21 that McDonald's violated the ADA in order to pursue damages under California's  
22 Unruh Civil Rights Act or Disabled Persons Act.

23 XXXI. TWENTY-SIXTH CLAIM

24 **Disabled Persons Act**

25 (The McDonald's Facility)

26 309. Rush incorporates the allegations contained in paragraphs 1 through  
27 308 for this claim.

1           310. California Civil Code § 54 states, in part, that: Individuals with  
2 disabilities have the same right as the general public to the full and free use of the  
3 streets, sidewalks, walkways, public buildings and facilities, and other public  
4 places.

5           311. California Civil Code § 54.1 also states, in part, that: Individuals  
6 with disabilities shall be entitled to full and equal access to accommodations,  
7 facilities, telephone facilities, places of public accommodation, and other places  
8 to which the general public is invited.

9           312. Both sections specifically incorporate (by reference) an individual's  
10 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

11           313. Here, McDonald's discriminated against the physically disabled  
12 public—including Rush—by denying them full and equal access to the  
13 McDonald's Facility. McDonald's also violated Rush's rights under the ADA,  
14 and, therefore, infringed upon or violated (or both) Rush's rights under the  
15 Disabled Persons Act.

16           314. For each offense of the Disabled Persons Act, Rush seeks actual  
17 damages (both general and special damages), statutory minimum damages of one  
18 thousand dollars (\$1,000), declaratory relief, and any other remedy available  
19 under California Civil Code § 54.3.

20           315. She also seeks to enjoin McDonald's from violating the Disabled  
21 Persons Act (and ADA) under California Civil Code § 55, and to recover  
22 reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and  
23 55.

XXXII. TWENTY-SEVENTH CLAIM

**Unruh Civil Rights Act**

(The McDonald's Facility)

316. Rush incorporates the allegations contained in paragraphs 1 through 315 for this claim.

317. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

318. California Civil Code § 51.5 also states, in part, that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

319. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

320. McDonalds' aforementioned acts and omissions denied the physically disabled public—including Rush—full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

321. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Rush by violating the Unruh Act.

322. Rush was damaged by McDonalds' wrongful conduct, and seeks statutory minimum damages of four thousand dollars (\$4,000) for each offense.

323. Rush also seeks to enjoin McDonald's from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

XXXIII. TWENTY-EIGHTH CLAIM

**Denial of Full and Equal Access to Public Facilities**

(The McDonald's Facility)

324. Rush incorporates the allegations contained in paragraphs 1 through 323 for this claim.

325. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

326. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

327. Rush alleges the McDonald's Facility is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the McDonald's Facility was not exempt under Health and Safety Code § 19956.

328. McDonalds' non-compliance with these requirements at the McDonald's Facility aggrieved (or potentially aggrieved) Rush and other persons with physical disabilities. Accordingly, she seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

XXXIV. TWENTY-NINTH CLAIM

**Americans with Disabilities Act of 1990**

**Denial of "Full and Equal" Enjoyment and Use**

(The Petsmart Facility)

329. Rush incorporates the allegations contained in paragraphs 1 through 328 for this claim.

330. Title III of the ADA holds as a "general rule" that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment



1 (or use) of goods, services, facilities, privileges, and accommodations offered by  
2 any person who owns, operates, or leases a place of public accommodation. 42  
3 U.S.C. § 12182(a).

4 331. Petsmart discriminated against Rush by denying “full and equal  
5 enjoyment” and use of the goods, services, facilities, privileges or  
6 accommodations of the Petsmart Facility during each visit and each incident of  
7 deterrence.

8 Failure to Remove Architectural Barriers in an Existing Facility

9 332. The ADA specifically prohibits failing to remove architectural  
10 barriers, which are structural in nature, in existing facilities where such removal  
11 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily  
12 achievable” is defined as “easily accomplishable and able to be carried out  
13 without much difficulty or expense.” *Id.* § 12181(9).

14 333. When an entity can demonstrate that removal of a barrier is not  
15 readily achievable, a failure to make goods, services, facilities, or  
16 accommodations available through alternative methods is also specifically  
17 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

18 334. Here, Rush alleges that Petsmart can easily remove the architectural  
19 barriers at Petsmart Facility without much difficulty or expense, and that  
20 Petsmart violated the ADA by failing to remove those barriers, when it was  
21 readily achievable to do so.

22 335. In the alternative, if it was not “readily achievable” for Petsmart to  
23 remove the Petsmart Facility’s barriers, then Petsmart violated the ADA by  
24 failing to make the required services available through alternative methods,  
25 which are readily achievable.

1                    Failure to Design and Construct an Accessible Facility

2            336. On information and belief, the Petsmart Facility was designed or  
3 constructed (or both) after January 26, 1992—independently triggering access  
4 requirements under Title III of the ADA.

5            337. The ADA also prohibits designing and constructing facilities for first  
6 occupancy after January 26, 1993, that aren't readily accessible to, and usable by,  
7 individuals with disabilities when it was structurally practicable to do so. 42  
8 U.S.C. § 12183(a)(1).

9            338. Here, Petsmart violated the ADA by designing or constructing (or  
10 both) the Petsmart Facility in a manner that was not readily accessible to the  
11 physically disabled public—including Rush—when it was structurally practical  
12 to do so.<sup>8</sup>

13                    Failure to Make an Altered Facility Accessible

14            339. On information and belief, the Petsmart Facility was modified after  
15 January 26, 1992, independently triggering access requirements under the ADA.

16            340. The ADA also requires that facilities altered in a manner that affects  
17 (or could affect) its usability must be made readily accessible to individuals with  
18 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an  
19 area that contains a facility's primary function also requires adding making the  
20 paths of travel, bathrooms, telephones, and drinking fountains serving that area  
21 accessible to the maximum extent feasible. *Id.*

22            341. Here, Petsmart altered the Petsmart Facility in a manner that violated  
23 the ADA and was not readily accessible to the physically disabled public—  
24 including Rush—to the maximum extent feasible.

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28            <sup>8</sup> Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a  
private attorney general under either state or federal statutes.

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Failure to Modify Existing Policies and Procedures

342. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

343. Here, Petsmart violated the ADA by failing to make reasonable modifications in policies, practices, or procedures at the Petsmart Facility, when these modifications were necessary to afford (and would not fundamentally alter the nature of) these goods, services, facilities, or accommodations.

344. Rush seeks all relief available under the ADA (*i.e.*, injunctive relief, attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

345. Rush also seeks a finding from this Court (*i.e.*, declaratory relief) that Petsmart violated the ADA in order to pursue damages under California's Unruh Civil Rights Act or Disabled Persons Act.

XXXV. THIRTIETH CLAIM

**Disabled Persons Act**

(The Petsmart Facility)

346. Rush incorporates the allegations contained in paragraphs 1 through 345 for this claim.

347. California Civil Code § 54 states, in part, that: Individuals with disabilities have the same right as the general public to the full and free use of the streets, sidewalks, walkways, public buildings and facilities, and other public places.

348. California Civil Code § 54.1 also states, in part, that: Individuals with disabilities shall be entitled to full and equal access to accommodations,

1 facilities, telephone facilities, places of public accommodation, and other places  
2 to which the general public is invited.

3 349. Both sections specifically incorporate (by reference) an individual's  
4 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

5 350. Here, Petsmart discriminated against the physically disabled  
6 public—including Rush—by denying them full and equal access to the Petsmart  
7 Facility. Petsmart also violated Rush's rights under the ADA, and, therefore,  
8 infringed upon or violated (or both) Rush's rights under the Disabled Persons  
9 Act.

10 351. For each offense of the Disabled Persons Act, Rush seeks actual  
11 damages (both general and special damages), statutory minimum damages of one  
12 thousand dollars (\$1,000), declaratory relief, and any other remedy available  
13 under California Civil Code § 54.3.

14 352. She also seeks to enjoin Petsmart from violating the Disabled  
15 Persons Act (and ADA) under California Civil Code § 55, and to recover  
16 reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and  
17 55.

18 XXXVI. THIRTY-FIRST CLAIM

19 **Unruh Civil Rights Act**

20 (The Petsmart Facility)

21 353. Rush incorporates the allegations contained in paragraphs 1 through  
22 352 for this claim.

23 354. California Civil Code § 51 states, in part, that: All persons within the  
24 jurisdiction of this state are entitled to the full and equal accommodations,  
25 advantages, facilities, privileges, or services in all business establishments of  
26 every kind whatsoever.

1           355. California Civil Code § 51.5 also states, in part, that: No business  
2 establishment of any kind whatsoever shall discriminate against any person in  
3 this state because of the disability of the person.

4           356. California Civil Code § 51(f) specifically incorporates (by reference)  
5 an individual's rights under the ADA into the Unruh Act.

6           357. Petsmart's aforementioned acts and omissions denied the physically  
7 disabled public—including Rush—full and equal accommodations, advantages,  
8 facilities, privileges and services in a business establishment (because of their  
9 physical disability).

10           358. These acts and omissions (including the ones that violate the ADA)  
11 denied, aided or incited a denial, or discriminated against Rush by violating the  
12 Unruh Act.

13           359. Rush was damaged by Petsmart's wrongful conduct, and seeks  
14 statutory minimum damages of four thousand dollars (\$4,000) for each offense.

15           360. Rush also seeks to enjoin Petsmart from violating the Unruh Act  
16 (and ADA), and recover reasonable attorneys' fees and costs incurred under  
17 California Civil Code § 52(a).

18                               XXXVII. THIRTY-SECOND CLAIM

19                               **Denial of Full and Equal Access to Public Facilities**

20                               (The Petsmart Facility)

21           361. Rush incorporates the allegations contained in paragraphs 1 through  
22 360 for this claim.

23           362. Health and Safety Code § 19955(a) states, in part, that: California  
24 public accommodations or facilities (built with private funds) shall adhere to the  
25 provisions of Government Code § 4450.



1           Failure to Remove Architectural Barriers in an Existing Facility

2           369. The ADA specifically prohibits failing to remove architectural  
3 barriers, which are structural in nature, in existing facilities where such removal  
4 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily  
5 achievable” is defined as “easily accomplishable and able to be carried out  
6 without much difficulty or expense.” Id. § 12181(9).

7           370. When an entity can demonstrate that removal of a barrier is not  
8 readily achievable, a failure to make goods, services, facilities, or  
9 accommodations available through alternative methods is also specifically  
10 prohibited if these methods are readily achievable. Id. § 12182(b)(2)(A)(v).

11           371. Here, Rush alleges that Target can easily remove the architectural  
12 barriers at Target Facility without much difficulty or expense, and that Target  
13 violated the ADA by failing to remove those barriers, when it was readily  
14 achievable to do so.

15           372. In the alternative, if it was not “readily achievable” for Target to  
16 remove the Target Facility’s barriers, then Target violated the ADA by failing to  
17 make the required services available through alternative methods, which are  
18 readily achievable.

19           Failure to Design and Construct an Accessible Facility

20           373. On information and belief, the Target Facility was designed or  
21 constructed (or both) after January 26, 1992—independently triggering access  
22 requirements under Title III of the ADA.

23           374. The ADA also prohibits designing and constructing facilities for first  
24 occupancy after January 26, 1993, that aren’t readily accessible to, and usable by,  
25 individuals with disabilities when it was structurally practicable to do so. 42  
26 U.S.C. § 12183(a)(1).

1        375. Here, Target violated the ADA by designing or constructing (or  
 2 both) the Target Facility in a manner that was not readily accessible to the  
 3 physically disabled public—including Rush—when it was structurally practical  
 4 to do so.<sup>9</sup>

5                    Failure to Make an Altered Facility Accessible

6        376. On information and belief, the Target Facility was modified after  
 7 January 26, 1992, independently triggering access requirements under the ADA.

8        377. The ADA also requires that facilities altered in a manner that affects  
 9 (or could affect) its usability must be made readily accessible to individuals with  
 10 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an  
 11 area that contains a facility's primary function also requires adding making the  
 12 paths of travel, bathrooms, telephones, and drinking fountains serving that area  
 13 accessible to the maximum extent feasible. Id.

14        378. Here, Target altered the Target Facility in a manner that violated the  
 15 ADA and was not readily accessible to the physically disabled public—including  
 16 Rush—to the maximum extent feasible.

17                    Failure to Modify Existing Policies and Procedures

18        379. The ADA also requires reasonable modifications in policies,  
 19 practices, or procedures, when necessary to afford such goods, services, facilities,  
 20 or accommodations to individuals with disabilities, unless the entity can  
 21 demonstrate that making such modifications would fundamentally alter their  
 22 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

23        380. Here, Target violated the ADA by failing to make reasonable  
 24 modifications in policies, practices, or procedures at the Target Facility, when  
 25  
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27        <sup>9</sup> Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a  
 28 private attorney general under either state or federal statutes.  
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1 these modifications were necessary to afford (and would not fundamentally alter  
2 the nature of) these goods, services, facilities, or accommodations.

3 381. Rush seeks all relief available under the ADA (*i.e.*, injunctive relief,  
4 attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C.  
5 § 12205.

6 382. Rush also seeks a finding from this Court (*i.e.*, declaratory relief)  
7 that Target violated the ADA in order to pursue damages under California's  
8 Unruh Civil Rights Act or Disabled Persons Act.

9 XXXIX. THIRTY-FOURTH CLAIM

10 **Disabled Persons Act**

11 (The Target Facility)

12 383. Rush incorporates the allegations contained in paragraphs 1 through  
13 382 for this claim.

14 384. California Civil Code § 54 states, in part, that: Individuals with  
15 disabilities have the same right as the general public to the full and free use of the  
16 streets, sidewalks, walkways, public buildings and facilities, and other public  
17 places.

18 385. California Civil Code § 54.1 also states, in part, that: Individuals  
19 with disabilities shall be entitled to full and equal access to accommodations,  
20 facilities, telephone facilities, places of public accommodation, and other places  
21 to which the general public is invited.

22 386. Both sections specifically incorporate (by reference) an individual's  
23 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

24 387. Here, Target discriminated against the physically disabled public—  
25 including Rush—by denying them full and equal access to the Target Facility.  
26 Target also violated Rush's rights under the ADA, and, therefore, infringed upon  
27 or violated (or both) Rush's rights under the Disabled Persons Act.

388. For each offense of the Disabled Persons Act, Rush seeks actual damages (both general and special damages), statutory minimum damages of one thousand dollars (\$1,000), declaratory relief, and any other remedy available under California Civil Code § 54.3.

389. She also seeks to enjoin Target from violating the Disabled Persons Act (and ADA) under California Civil Code § 55, and to recover reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and 55.

## XL. THIRTY-FIFTH CLAIM

## Unruh Civil Rights Act

(The Target Facility)

390. Rush incorporates the allegations contained in paragraphs 1 through 389 for this claim.

391. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

392. California Civil Code § 51.5 also states, in part, that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

393. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

394. Target's aforementioned acts and omissions denied the physically disabled public—including Rush—full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).



XLII. THIRTY-SEVENTH CLAIM

**Americans with Disabilities Act of 1990**

Denial of “Full and Equal” Enjoyment and Use

(The Encinitas Ranch Town Center Facility)

403. Rush incorporates the allegations contained in paragraphs 1 through 402. for this claim.

404. Title III of the ADA holds as a “general rule” that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

405. Encinitas Ranch Town Center discriminated against Rush by denying “full and equal enjoyment” and use of the goods, services, facilities, privileges or accommodations of the Encinitas Ranch Town Center Facility during each visit and each incident of deterrence.

Failure to Remove Architectural Barriers in an Existing Facility

406. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily achievable” is defined as “easily accomplishable and able to be carried out without much difficulty or expense.” *Id.* § 12181(9).

407. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

408. Here, Rush alleges that Encinitas Ranch Town Center can easily remove the architectural barriers at Encinitas Ranch Town Center Facility

1 without much difficulty or expense, and that Encinitas Ranch Town Center  
2 violated the ADA by failing to remove those barriers, when it was readily  
3 achievable to do so.

4 409. In the alternative, if it was not “readily achievable” for Encinitas  
5 Ranch Town Center to remove the Encinitas Ranch Town Center Facility’s  
6 barriers, then Encinitas Ranch Town Center violated the ADA by failing to make  
7 the required services available through alternative methods, which are readily  
8 achievable.

9 Failure to Design and Construct an Accessible Facility

10 410. On information and belief, the Encinitas Ranch Town Center  
11 Facility was designed or constructed (or both) after January 26, 1992—  
12 independently triggering access requirements under Title III of the ADA.

13 411. The ADA also prohibits designing and constructing facilities for first  
14 occupancy after January 26, 1993, that aren’t readily accessible to, and usable by,  
15 individuals with disabilities when it was structurally practicable to do so. 42  
16 U.S.C. § 12183(a)(1).

17 412. Here, Encinitas Ranch Town Center violated the ADA by designing  
18 or constructing (or both) the Encinitas Ranch Town Center Facility in a manner  
19 that was not readily accessible to the physically disabled public—including  
20 Rush—when it was structurally practical to do so.<sup>10</sup>

21 Failure to Make an Altered Facility Accessible

22 413. On information and belief, the Encinitas Ranch Town Center  
23 Facility was modified after January 26, 1992, independently triggering access  
24 requirements under the ADA.

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28 <sup>10</sup> Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a  
private attorney general under either state or federal statutes.

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1        414. The ADA also requires that facilities altered in a manner that affects  
2 (or could affect) its usability must be made readily accessible to individuals with  
3 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an  
4 area that contains a facility's primary function also requires adding making the  
5 paths of travel, bathrooms, telephones, and drinking fountains serving that area  
6 accessible to the maximum extent feasible. Id.

7        415. Here, Encinitas Ranch Town Center altered the Encinitas Ranch  
8 Town Center Facility in a manner that violated the ADA and was not readily  
9 accessible to the physically disabled public—including Rush—to the maximum  
10 extent feasible.

11                    Failure to Modify Existing Policies and Procedures

12        416. The ADA also requires reasonable modifications in policies,  
13 practices, or procedures, when necessary to afford such goods, services, facilities,  
14 or accommodations to individuals with disabilities, unless the entity can  
15 demonstrate that making such modifications would fundamentally alter their  
16 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

17        417. Here, Encinitas Ranch Town Center violated the ADA by failing to  
18 make reasonable modifications in policies, practices, or procedures at the  
19 Encinitas Ranch Town Center Facility, when these modifications were necessary  
20 to afford (and would not fundamentally alter the nature of) these goods, services,  
21 facilities, or accommodations.

22        418. Rush seeks all relief available under the ADA (*i.e.*, injunctive relief,  
23 attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C.  
24 § 12205.

25        419. Rush also seeks a finding from this Court (*i.e.*, declaratory relief)  
26 that Encinitas Ranch Town Center violated the ADA in order to pursue damages  
27 under California's Unruh Civil Rights Act or Disabled Persons Act.

XLIII. THIRTY-EIGHTH CLAIM

**Disabled Persons Act**

(The Encinitas Ranch Town Center Facility)

420. Rush incorporates the allegations contained in paragraphs 1 through 419 for this claim.

421. California Civil Code § 54 states, in part, that: Individuals with disabilities have the same right as the general public to the full and free use of the streets, sidewalks, walkways, public buildings and facilities, and other public places.

422. California Civil Code § 54.1 also states, in part, that: Individuals with disabilities shall be entitled to full and equal access to accommodations, facilities, telephone facilities, places of public accommodation, and other places to which the general public is invited.

423. Both sections specifically incorporate (by reference) an individual's rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

424. Here, Encinitas Ranch Town Center discriminated against the physically disabled public—including Rush—by denying them full and equal access to the Encinitas Ranch Town Center Facility. Encinitas Ranch Town Center also violated Rush's rights under the ADA, and, therefore, infringed upon or violated (or both) Rush's rights under the Disabled Persons Act.

425. For each offense of the Disabled Persons Act, Rush seeks actual damages (both general and special damages), statutory minimum damages of one thousand dollars (\$1,000), declaratory relief, and any other remedy available under California Civil Code § 54.3.

426. She also seeks to enjoin Encinitas Ranch Town Center from violating the Disabled Persons Act (and ADA) under California Civil Code § 55,

1 and to recover reasonable attorneys' fees and incurred under California Civil  
2 Code §§ 54.3 and 55.

3 XLIV. THIRTY-NINTH CLAIM

4 **Unruh Civil Rights Act**

5 (The Encinitas Ranch Town Center Facility)

6 427. Rush incorporates the allegations contained in paragraphs 1 through  
7 426 for this claim.

8 428. California Civil Code § 51 states, in part, that: All persons within the  
9 jurisdiction of this state are entitled to the full and equal accommodations,  
10 advantages, facilities, privileges, or services in all business establishments of  
11 every kind whatsoever.

12 429. California Civil Code § 51.5 also states, in part, that: No business  
13 establishment of any kind whatsoever shall discriminate against any person in  
14 this state because of the disability of the person.

15 430. California Civil Code § 51(f) specifically incorporates (by reference)  
16 an individual's rights under the ADA into the Unruh Act.

17 431. Encinitas Ranch Town Center's aforementioned acts and omissions  
18 denied the physically disabled public—including Rush—full and equal  
19 accommodations, advantages, facilities, privileges and services in a business  
20 establishment (because of their physical disability).

21 432. These acts and omissions (including the ones that violate the ADA)  
22 denied, aided or incited a denial, or discriminated against Rush by violating the  
23 Unruh Act.

24 433. Rush was damaged by Encinitas Ranch Town Center's wrongful  
25 conduct, and seeks statutory minimum damages of four thousand dollars (\$4,000)  
26 for each offense.



1       434. Rush also seeks to enjoin Encinitas Ranch Town Center from  
2 violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and  
3 costs incurred under California Civil Code § 52(a).

4                                   XLV. FORTIETH CLAIM

5                           **Denial of Full and Equal Access to Public Facilities**

6                                   (The Encinitas Ranch Town Center Facility)

7       435. Rush incorporates the allegations contained in paragraphs 1 through  
8 434 for this claim.

9       436. Health and Safety Code § 19955(a) states, in part, that: California  
10 public accommodations or facilities (built with private funds) shall adhere to the  
11 provisions of Government Code § 4450.

12       437. Health and Safety Code § 19959 states, in part, that: Every existing  
13 (non-exempt) public accommodation constructed prior to July 1, 1970, which is  
14 altered or structurally repaired, is required to comply with this chapter.

15       438. Rush alleges the Encinitas Ranch Town Center Facility is a public  
16 accommodation constructed, altered, or repaired in a manner that violates Part 5.5  
17 of the Health and Safety Code or Government Code § 4450 (or both), and that the  
18 Encinitas Ranch Town Center Facility was not exempt under Health and Safety  
19 Code § 19956.

20       439. Encinitas Ranch Town Center's non-compliance with these  
21 requirements at the Encinitas Ranch Town Center Facility aggrieved (or  
22 potentially aggrieved) Rush and other persons with physical disabilities.  
23 Accordingly, she seeks injunctive relief and attorney fees pursuant to Health and  
24 Safety Code § 19953.

PRAYER FOR RELIEF

WHEREFORE, Rush prays judgment against Party City for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that Party City violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.<sup>11</sup>
5. Interest at the legal rate from the date of the filing of this action.

PRAYER FOR RELIEF

WHEREFORE, Rush prays judgment against Office Depot for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that Office Depot violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.<sup>12</sup>
5. Interest at the legal rate from the date of the filing of this action.

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<sup>11</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

<sup>12</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

*Rush v. Encinitas Town Center Associates I, LLC, et al.*

Plaintiff's Complaint

PRAYER FOR RELIEF

WHEREFORE, Rush prays judgment against Best Buy for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that Best Buy violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.<sup>13</sup>
5. Interest at the legal rate from the date of the filing of this action.

PRAYER FOR RELIEF

WHEREFORE, Rush prays judgment against Ross Dress for Less for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that Ross Dress for Less violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.<sup>14</sup>
5. Interest at the legal rate from the date of the filing of this action.

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<sup>13</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

<sup>14</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

*Rush v. Encinitas Town Center Associates I, LLC, et al.*

Plaintiff's Complaint

PRAYER FOR RELIEF

WHEREFORE, Rush prays judgment against Barnes & Noble for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that Barnes & Noble violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.<sup>15</sup>
5. Interest at the legal rate from the date of the filing of this action.

PRAYER FOR RELIEF

WHEREFORE, Rush prays judgment against Stater Bros. for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that Stater Bros. violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.<sup>16</sup>
5. Interest at the legal rate from the date of the filing of this action.

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<sup>15</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

<sup>16</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

*Rush v. Encinitas Town Center Associates I, LLC, et al.*

Plaintiff's Complaint

PRAYER FOR RELIEF

WHEREFORE, Rush prays judgment against McDonald's for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that McDonald's violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.<sup>17</sup>
5. Interest at the legal rate from the date of the filing of this action.

PRAYER FOR RELIEF

WHEREFORE, Rush prays judgment against Petsmart for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that Petsmart violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.<sup>18</sup>
5. Interest at the legal rate from the date of the filing of this action.

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<sup>17</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

<sup>18</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

*Rush v. Encinitas Town Center Associates I, LLC, et al.*

Plaintiff's Complaint

PRAYER FOR RELIEF

WHEREFORE, Rush prays judgment against Target for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that Target violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.<sup>19</sup>
5. Interest at the legal rate from the date of the filing of this action.

PRAYER FOR RELIEF

WHEREFORE, Rush prays judgment against Encinitas Ranch Town Center for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that Encinitas Ranch Town Center violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.<sup>20</sup>
5. Interest at the legal rate from the date of the filing of this action.

DATED: December 20, 2011    DISABLED ADVOCACY GROUP, APLC

/s/ Lynn Hubbard, III

LYNN HUBBARD, III  
Attorney for Plaintiff

<sup>19</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

<sup>20</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

*Rush v. Encinitas Town Center Associates I, LLC, et al.*

Plaintiff's Complaint

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

SANDI RUSH

(b) County of Residence of First Listed Plaintiff SAN DIEGO

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

LYNN HUBBARD, III DISABLED ADVOCACY GROUP, APLC  
12 Williamsburg Lane Chico, CA 95926 (530) 895-3252

**DEFENDANTS**

SEE ATTACHED LIST

County of Residence of First Listed Defendant \_\_\_\_\_

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**'11CV2987 DMS POR****II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |  | PTF                        | DEF                        |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation   | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. Section 12101, et seq.

Brief description of cause:

Ongoing violations of the ADA Construction Standards

**VII. REQUESTED IN COMPLAINT:**
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

12/22/2011

/s/ Lynn Hubbard, III

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

## **DEFENDANT LIST**

- 1.** Encinitas Town Center Associates I, LLC;
- 2.** Zelman Development Co.;
- 3.** Party City Corp. dba Party City #526;
- 4.** Office Depot, Inc. dba Office Depot #965;
- 5.** Best Buy Stores, LP dba Best Buy #1187;
- 6.** Ross Dress for Less, Inc. dba Ross Dress for Less #359;
- 7.** Barnes & Noble Booksellers, Inc. dba Barnes & Noble Super Store #2785;
- 8.** Stater Bros. Markets dba Stater Bros. Market #6158;
- 9.** K R Schulz Management, Inc. dba McDonald's #14229;
- 10.** McDonald's Corporation;
- 11.** Petsmart, Inc. dba Petsmart #144;
- 12.** Target Corporation dba Target #1029